

The General
L A W S of ESTATES;
 O R,
Freeholder's Companion:

Containing

The Laws, Statutes, and Customs relating to Freehold and other Estates, whereby all Country Gentlemen and Freeholders may know their Rights thereto, and Qualifications to be Members of Parliament, Electors, Justices of Peace, and Jurymen; and to kill Game, erect Dove-cotes, &c.

In which is compriz'd

The whole Law of Tenures of Lands, and to whom they fall and descend, or otherwise belong, on any Alteration, from the Estate in Fee-simple, down to Estates for Life, and Years, and also Copyholds; adapted to the Use of all Lords, Landlords and Tenants.

With a full and compleat Abstract of

The New Act of Parliament concerning Distresses for Rent, Replevins and Ejectments, &c. and several other late popular Statutes.

Likewise

Some very useful Precedents of Deeds and Writings, applicable to this Work.

In the SAVOY:

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John W. Riney, Esq.
Lord Chief Justice of the
Common Pleas

Rec. Apr. 14, 1906.

I
Humbly presume to
dedicate this treatise
to your Lordship of
the Law, and
Customs concerning Real
Estate, as the basis of Ac-
tions for Recovery there-
of are chiefly cognizable
in that ancient Court of
Record and of great Au-
thority in which you

To the Right Honourable

Sir *John Willes*, Knt.

Lord Chief Justice of the
COMMON PLEAS.

MY LORD,

I Humbly presume to
dedicate this Treatise
to your Lordship, of
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Customs concerning Real
Estates, as the Suits or Ac-
tions for Recovery there-
of, are chiefly cognizable
in that ancient Court of
Record and of great Au-
thority, in which your

iv *The Dedication.*

Lordship worthily pre-
sides.

I am encouraged in this Address, on Account of the many Excellencies and eminent Virtues, that are unquestionably acknowledged to be your Lordship's; such as an uncommon Quickness of Understanding, beyond any of your Contemporaries, a clear and solid Judgment, the most consummate Knowledge of our Laws, great and general Learning, and a just Steadiness, agreeably mixed with good Nature and Humanity; which very commendable Qualities, have
at

The Dedication. v

at length acquired your Lordship the greatest Praise, and shewn you to be Equal to the Highest Employment.

The Gentlemen who have the Honour to plead Causes at your Lordship's Bar, continually reap a double Satisfaction; for they are ever heard in their learned Arguments with Attention and Encouragement, and sure to hear from your Lordship wise and righteous Determinations; wherein you so exactly imitate the excellent Lord HOBART, formerly Possessor of your Lordship's high Station,
in

vi *The Dedication.*

in the finest Reasoning,
the justest Distinction of
Things, and most extensive
other Abilities.

As the bright and shining Character which your Lordship is intitled to, renders you highly Esteemed by all Persons of Sense and Discernment, therefore I hope your Lordship will Pardon this Freedom, and be pleased to receive favourably what is here with great Sincerity offered you by,

My Lord,

Your Lordship's most dutiful,

and most obedient humble Servant,

GILES JACOB.

THE
PREFACE.

THE Reader is to be acquainted, that the following Sheets contain a regular compleat Treatise of every Thing material on the Subject, supported and maintained by the Institutes of my Lord Coke, and all other the best Authorities, both Ancient and Modern, with the Reasoning of our greatest and most learned Judges in difficult Cases; and here the many Volumes of Reports, and original Authors themselves, have been every where consulted at large, and are constantly referred to in each Page.

I have herein inserted, not only all the Law-Cases, that relate to the several Heads concerning Estates, and Acts of Parliament, even the very latest down to this Time; but also a great many Cases in Chancery, where Equity has interposed, not to be found in any other Book of this Nature: And in all Common Law Estates, Freeholders are more or less interested, either as Possessors or Owners thereof; so that this Treatise may be truly and properly called the Freeholder's Companion.

My general Titles of the Fee-simple Estate, Descents, and Partition of Lands, of Estates-tail,

viii The PREFACE.

tail, Dower *and* Jointures, Tenants by the Curtesy, *Estates of* Tenants in Common, *and* Jointenants, &c. will appear so differently handled by me from the same Heads in the short common Treatises hitherto published upon these Subjects, and likewise so greatly improved, that I flatter my self this Work will be very useful and profitable to every Reader, who has any Share of Property in Lands or Tenements; and to all Conveyancers, Law-Practisers, Attornies and other Persons, whose Business concerns Titles to Estates, I may venture to say it will be of singular Use.

And under the Head of Estates for Life and Years, I have omitted nothing that has any Relation to Landlords and Tenants, in all Cases that may or can happen between them; particularly as to Covenants in Leases, Reparation of the Premisses, Payment of Rent, Distresses, Replewins, Ejectment of Tenants, &c. To which, as Copyhold Estates in Fee and for Lives lie often intermixed with Freeholds in Towns and Parishes, at the End I have added a short Notice of these Customary Estates, in a curious Manner, and some exceeding useful English Precedents never before printed, to make my Treatise the more thoroughly acceptable.

G. J.

THE
Laws of ESTATES:
OR,
Freeholder's Companion.

Of Freehold Estates and Freeholders
in general.

A Freehold is that Land or Tenement which a Man holds in Fee-simple, Fee-tail, or for Term of Life: And is described to be of two Sorts, either in Deed or in Law, the first being the real and actual Possession of Lands and Tenements in Fee, or for Life; and the other, the Right a Person hath to such Lands or Tenements, before his Entry, as in Cases of Discents, or Bargains and Sales, and Fines levied, &c. A Parson hath a Freehold in his Church, the Church-yard and Glebe Land, for his Time: Freehold is likewise extended to
B Offices,

2 Of Freehold Estates, and

Offices, that a Man holds in Fee, or during Life. *Bract. lib. 2. cap. 9. 1 Inst. 266.*

The Freeholders are such Persons as hold and enjoy any Freehold Estate. And Freehold in this Kingdom hath been sometimes taken in Opposition to *Villénage* or Copyhold, it being Lands in the Hands of the Gentry and better Sort of Tenants, by certain Tenure, who were always Freeholders; contrary to what was in the Possession of the inferior People, held at the Will of the Lord. That which in the ancient Law is called *Frank-Fee*, is a Possession of Freehold Lands and Tenements, holden at Common Law, to a Man and his Heirs; and not by such Service, as is required in Ancient Demesne, according to the Custom of the Manor. *Lambard, Reg. Orig. 12.*

In Favour of Freehold Estates, the Statute of *Magna Charta* ordains, that no Person shall be disseised of his Freehold, &c. but by Judgment of his Peers, or the Law of the Land; which doth not only relate to common Disseisins of Land, but the King may not otherwise seize the Freehold of the Subject. 9 *Hen. 3. cap. 29.* Freeholders shall not be distrain'd to answer, without the Kings Writ: And no Persons may be compelled to make Answer for their Freeholds, before the Counsel or Court of any Lord of a Manor; Lords doing to the contrary, shall forfeit 20 *l.* by the Statutes 52 *H. 3. c. 22.* and 15 & 16 *R. 2.*

Every Man who hath an Estate in any Land or Tenements for his own Life, or the Life of another, is called Freehold Tenant; and no other of a less Estate can have a Freehold: But they of a greater Estate may, for he in Fee-simple hath Freehold, and so Tenant in Tail, &c. When one pleads his Freehold generally, it shall be intended that he hath the Fee, and not an Estate for Life; and on

Freeholders in general. 3

a Man's thus pleading, it will be presumed so to continue, except the contrary be shewn. *Litt. Sect. 57. Cro. Eliz. 87, 88.*

An Estate for Life, tho' a Freehold, is but a particular Estate derived out of the Inheritance, upon which a Reversion or Remainder may depend: But it may in some Cases descend to the Heir, as when Lands are granted to *A. B.* and his Heirs, for the Life of *C. D.* In this Case if *A. B.* die, his Heir shall have the same, during the Life of *C. D.* And this hath been called a Freehold descendible: It is next in order to an Estate-tail, and cannot be made without Livery and Seisin. 10 *Rep. 98.*

If a Man makes a Lease to one for Years, Remainder to another for Life, or in Tail, &c. in this Case it is necessary, that the Lessor make Livery of Seisin to the Lessee, otherwise nothing passeth to him in the Remainder, altho' the Lessee or immediate Tenant enter into the Tenements: And here if the Termor entereth before any Livery and Seisin made to him, then is the Freehold and also the Reversion in the Lessor; but if he makes Livery to the Lessee, the Freehold together with the Fee is to them in Remainder, according to the Form of the Grant. *Litt. 60.*

This Livery is not required for the Lessee himself, because he hath but a Term for Years, but it is for the Benefit of those in the Remainder, so as to enure to them; for the Livery of Possession could not be made to the next in Remainder, because the Possession belonged to the Lessee for Years, and for that the particular Term, and all the Remainders make in Law but one Estate, and take Effect at one Time. 1 *Co. Inst. 49.*

A Freehold Lease for Life, of any Thing, if it be *in Esse* before, may not commence at a Day to come: An Estate of Freehold cannot by the Common Law begin *in futuro*; but it must take Effect presently in Possession, Reversion, or Remainder. A Man made a Deed of Gift to his Son and his Heirs, of Lands after his Death, and no Livery was made thereon; now if there had been Livery, it would have been void, because a Freehold cannot commence *in futuro*; yet he might have covenanted to stand seised to the Use of his Son after his Death: And it was held, that it should not be construed as a Covenant to stand seised, by Reason of the Word *Give*; by which was intended a Transmutation of the Estate, and not to pass it by Way of Use. 5 Rep. 94. March 50, 51.

Whatsoever is Part of the Freehold, goes to the Heir, after the Death of the Ancestor; and hence it is, that Glass annexed to Windows, shall descend as Parcel of the Inheritance to one's Heir: And altho' the Lessee himself at his own Costs put the Glass in the Windows, yet it being once Parcel of the House, he cannot lawfully take it away. It has been adjudg'd, that if the Glass be fixed to Windows by Nails, or in any other Manner, by the Lessor or Lessee, it could not be removed by the Tenant, for without Glass it is no perfect House; and by Lease or Grant of the House, it should pass as Parcel thereof; and perhaps great Part of the Costs expended on the House consists of Glass Windows, which if they are open to Rain and Tempests, Decay and Putrefaction of the Timber would follow. Moor 178. 1 Inst. 53. 4 Rep. 63, 64.

It was also resolv'd, that Wainscot, be it annex'd to the Freehold of an House either by Lessor or Lessee, (that is Landlord or Tenant) is Parcel
of

Freeholders in general.

5

of the House; and there is no Difference in Law, if it be fastened by great Nails, or little ones, or by Scrues, or Irons put through the Posts or Walls, as have been invented of late Time: For if the Wainscot is by any of the said Ways, or by any other fasten'd to the Posts or Walls of the House, the Lessee cannot remove it, but he is punishable in Action of Waste; because it is Parcel of the House in the same Manner, as the Cieling and Plaistering thereof. 4 Rep. 64. 1 Inst. 53.

A Lessee made a Furnace for the Use of a Dyer, and fixed it to the Wall of his House, and the Lessee being condemn'd in Debt, the Sheriff came to the Furnace, and putting his Hands upon it, delivered it to the Defendant, upon which Action of Trespass was brought. Here *Glanvil* Justice said, that a Furnace may be delivered in Execution, and the House be never the worse; but it is otherwise of the Doors, because the Lessee cannot be without them: Though a Distinction has been made, between outer Doors, and inner Doors, put up by the Lessee, after the Commencement of his Term; for the one may be taken away, and the other not. It is not Waste to take away a Furnace; indeed the Heir shall have the same, but this does not prove it is no Chattel, for it is because it is annexed to the Land, as in Case of Writings. By *Dyer*, The Diversity is when the Furnace is fixed to the Middle of the House, there it is but a Chattel, and is removable; but when fix'd to the Wall, the Termor may not remove it, for the Wall would be the Worse for taking it away, and thereby the Freehold of the House endamaged. *Owen* 71. *Cro. Eliz.* 374. *Moor* 177.

It hath been adjudg'd, that if Things for Trade, &c. are fixed to the Freehold by the Lessee, he may take them down and remove them, so as he

6 Of Freehold Estates, and

do it before the End of the Term. Tenant for Years made an Under-lease of a House in *Holborn* to one who was by Trade a Sope-boiler, and he for the Convenience of his Trade, put up Fats, Coppers, Tables, Partitions, and paved the Back-side, &c. And by *Holt* Chief Justice it was held, that during the Term the Sope-boiler might well remove the Fats and other Things he set up in Relation to Trade, and that by the Common Law, (not by Virtue of any special Custom) in Favour of Trade and to encourage Industry: But after the Term, they become a Gift in Law to him in Reversion, and are not removable. That there was a Difference between what the Sope-boiler did to carry on his Trade, and what he did to compleat the House, as making Hearths and Chimney-pieces, which he held not to be removable. *Mich. 2 Ann. Poole's Case, 1 Salk. 368.*

This was where upon a Writ of *Fieri facias* issued on a Judgment in Debt against the Undertenant, the Sheriff took up all these Things, and left the House stripp'd and in a ruinous Condition; so that the first Lessee was liable to make it good, and he thereupon brought a special Action on the Case against the Sheriff and those that bought the Goods, for the Damage done to the House: But it was ruled, that the Sheriff might take them in Execution in this Case, as well as the Under-lessee might remove them. *Ibid.*

Any Thing fixed to the Freehold, as a Furnace, the Doors or Windows of a House, or such like, may not be distrained for Rent. Though by the Common Law, it is not Felony to steal Lead from a Church or House; Corn or Grass growing on the Ground, Apples upon a Tree, &c. for this is only Trespass: But if they are severed from the Freehold, whether by the Owner or the Thief, if he
sever

Freeholders in general.

7

sever them at one Time, and take them away at another, it is Larceny to take them. 2 *Danv. Abr.* 641. 1 *Hawk. P. C.* 93.

By a late Act, all Persons who shall steal, or rip off, cut or break, with Intent to steal, any Lead, Iron Bar, Gate, Iron Palisadoe, or Iron Rail, fix'd to any Dwelling-house, or other Building, or in any Garden, Court-yard, Fence, &c. thereto belonging, shall be guilty of Felony; and the Court before whom such Persons shall be tried, shall have Power to transport them for seven Years: And Persons that shall be assisting in Stealing, or in such Ripping, Cutting, or Breaking any Lead, Iron Bar, &c. knowing them to be stolen, shall be liable to the like Punishment as for Stealing the same. 4 *Geo. 2. c.* 32.

From Freeholds in general, I come to Freeholders, as to their Privileges and Qualifications to be chiefe Members of Parliament, Electors of Parliament Men, Justices of Peace, Jurymen, &c.

The Qualification of Freeholders to be Members of Parliament.

AN ancient Statute enacts, that Knights of the Shire shall be resident in the County for which they are chosen; as likewise Citizens and Burgesses elected are to be residing in and free of the same Cities and Boroughs, the Day of the Date of the Writ of Summons to Parliament, and they ought to be notable Knights of the County, and notable Esquires and Gentlemen, &c. 1 *Hen. 5. cap.* 1.

And a much later Statute than this hath enacted, That no Person shall be a Member of Parliament, who hath not an Estate of Freehold or Copyhold for

Life, or some greater Estate, to his own Use, either in Law or Equity, *viz.* a Knight of a Shire 600 *l.* a Year, over and above what will satisfy all Incumbrances, and a Citizen and Burgeſs and Baron of the *Cinque Ports*, 300 *l. per Annum*; of which particular Oath is to be made at the Request of any other Candidate, at the Time of Election, or of two or more Persons who have a Right to vote, and of the Pariſhes or Places where the Lands lie, &c. and if any Person ſhall be elected and return'd to ſerve in Parliament, not being ſo qualified, the Return ſhall be void. 9 *Ann. cap. 5.*

It is provided that none ſhall be qualified by Virtue of any Mortgage on ſuch Estate, whereof the Equity of Redemption is in another, unleſs the Mortgagee ſhall have been in Poſſeſſion ſeven Years before the Election: Though the eldeſt Son of a Peer, or of any Person qualify'd by the Act to ſerve as Knight of the Shire, ſhall not be incapable of being elected, and ſitting and voting in any Parliament. *Stat. ibid.*

By another Act, Persons having Penſions, for Terms of Years, &c. are not capable to be elected; and ſuch Penſioners preſuming to ſit and vote, to forfeit 20 *l.* a Day. 1 *Geo. 1. c. 56.*

All Members of Parliament, when choſen out of Freeholders, &c. that they may attend the publick Service of their Country, have Privilege of Parliament for themſelves and their menial Servants, to be free from Arreſts, Citations, &c. and for their Horſes and Goods to be free from Diſtreſſes: And this Privilege doth generally hold in all Caſes, except in Treason, Felony, and for Breach of the Peace; alſo it is claimed for the Space of forty Days before the Sitting of the Parliament, and
forty

forty Days afterwards, as well as during the Session.

4 *Inst.* 24. 2 *Lev.* 72.

But the Statute 12 *H.* 3. c. 3. ordains, that Actions may be prosecuted in any of the Courts of Record at *Westminster*, High Court of Chancery, &c. against Persons intitled to Privilege of Parliament, immediately after a Dissolution or Prorogation, until a new Parliament is called, or the same is re-assembled; and immediately after Adjournment of both Houses for above fourteen Days, 'till re-assumed: And the said Courts during such Time, shall proceed to give Judgment, &c. The Process against any Member of Parliament, or other Person having Privilege, during the Time aforesaid, out of the said Courts, to be Summons and Distress infinite, or original Bill, Summons, Attachment, &c. until the Parties appear, or file common Bail: And for Default of Appearance or Answer, the Estates of the Defendants may be sequestred; but the Plaintiff may not arrest the Body of any Knight, Citizen and Burgefs, or other privileged Person, during the Continuance of Privilege.

And where any Plaintiff shall be stayed from Proceeding by Privilege of Parliament, he shall not be barred by the Statute of Limitations, or nonsuited, dismissed, or have his Suit discontinued for Want of Prosecution; but upon the Rising of the Parliament, shall be at Liberty to proceed to Judgment and Execution. And Suits may be brought here or in *Ireland*, against any Peer, or Member of Parliament, or their menial Servants, &c. in the Intervals of Parliament, or of Sessions, being more than fourteen Days; and the Courts after Dissolutions, or Prorogations, to give Judgment, and award Execution, &c. by 11 *Geo.* 2. cap. 24.

Qua-

10 Of Freehold Estates, and

Qualification of Freeholders, to be Electors of Parliament Men, &c.

THE Election of Knights of the Shire, is to be made by a Majority or the greater Number of People dwelling in the Counties, having each of them Lands or Tenements to the yearly Value of 40 s. besides Reprises: And the Sheriff hath Power to examine upon Oath the Choosers, how much they may expend by the Year. He that cannot expend 40 s. *per Annum*, shall have no vote in the Election of Knights for the Parliament; and in every Writ issued out for that Purpose, Mention shall be made of this Ordinance. *Stat. 8 Hen. 6. cap. 7.*

And the Statute 10 *H. 6. cap. 2.* ordains, That a Chooser of Knights of Parliament must be resident and dwelling, and have Freehold of the Value of 40 s. a Year at the least, above all Charges, within the same County; or he may not meddle with any such Election.

The Act 7 & 8 *Will. 3. cap. 25.* enacts, that every Freeholder, before he is admitted to poll, if required by any of the Candidates, shall take an Oath, to be administered by the Sheriff, Under-Sheriff, or Clerk, (who are first sworn truly to take the said Poll, and set down the Names of each Freeholder, and for whom he Polls, &c.) That he is a Freeholder of the County, and hath Freehold Lands or Hereditaments of the yearly Value of 40 s. lying at such a Place, within the said County, and that he hath not been before polled at the Election.

Freeholders in general. 11

No Person shall be allowed to have any vote in Election of Members to serve in Parliament, for or by Reason of any Trust or Mortgage, unless the Trustee or Mortgagee be in actual Possession, or receive the Rents and Profits of the Estate; but the Mortgagor, or *Cestui que Trust* in Possession, shall and may vote for the same Estate: And all Conveyances of Lands, Tenements and Hereditaments, in any County, City, Town Corporate, or Place, in order to multiply votes, or split and divide the Interest in any Houses or Lands, among several Persons, to enable them to vote at Elections of Members, shall be void and of none Effect; and no more than one vote to be admitted for one and the same House and Tenement.

Persons under the Age of twenty-one Years, shall not be admitted to vote in the Election of any Member of Parliament; and no Person shall be capable of being elected a Member to serve in Parliament, who is under that Age.

By the 10 *Ann. cap. 23.* All Estates and Conveyances made to any Persons in a fraudulent Manner, on Purpose to qualify them to vote, subject to Conditions and Agreements to defeat or determine such Estates or reconvey the same, shall be taken against the Persons executing the said Conveyances as free and absolute, and shall be discharged of such Conditions, &c. And all Bonds and other Securities between the Parties, for redeeming, revoking, or defeating such Estates, are declared void; and Persons making the Conveyances, or being privy thereto, and who by Colour thereof vote at any Election of Knights of the Shire, shall forfeit 40 *l.* to any Person who will sue for it, by Action of Debt, &c. in the Courts at *Westminster*.

None shall vote at an Election of a Knight of the Shire in *England*, in Right of any Lands, which

12 Of freehold Estates, and

which have not been charged or assessed to the publick Taxes, Church-Rates, and Parish-Duties, in such Proportion as other Lands and Tenements of 40 s. *per Annum*, within the same Parish are usually charged; and for which he shall not have received the Rents or Profits, or be intitled to the same, to the full Value of 40 s. or more, to his own Use, for one Year before the Election; except such Lands or Tenements came to him in that Time, by Discent, Marriage, or Settlement in Marriage, Devise, or Presentation to some Church Benefice, or by Promotion to an Office, to which such Freehold is annexed: The Person voting contrary, incurs a like Forfeiture of 40 l. one Moiety to the Poor of the Parish where the Lands or Tenements are, for which he voted, and the other Moiety to him that will sue for the same.

And the Oath that every Freeholder is to take, if required by the Candidates, shall by this Act be as follows,

You shall swear, That you are a Freeholder in the County of Middlesex, and have Freehold Lands or Hereditaments lying or being at Brentford in the said County of Middlesex, of the yearly Value of 40 s. above all Charges payable out of the same, and that such Freehold Estate hath not been made or granted to you fraudulently, on Purpose to qualify you to give your Vote, and that the Place of your Abode is at Hounslow in the said County, and that you have not been polled before at this Election.

But a Quaker, declaring the Effect of the Oath, upon his solemn Affirmation, &c. shall be admitted to vote; and every Sheriff, or his proper Officer, shall accept such Affirmation instead of the said Oath:

Freeholders in general. 13

Oath: And if any Freeholder taking the Oath, shall be convicted of wilful Perjury; or any one shall corrupt or suborn a Freeholder to take the said Oath, whereby he shall commit Perjury; or if any Quaker is convicted of wilfully affirming any Thing false, which if it had been taken in the usual Form, would have amounted to wilful Perjury; they shall incur the Pains and Penalties enacted in the Act 5 *Eliz. cap. 9.*

By 12 *Ann. c. 5.* the afore-mentioned Statute 10 *Ann.* shall not extend to restrain any Person from voting in an Election of any Knight of a Shire, in Right of any Tithes, or other incorporeal Inheritances, or in any Messuages or Lands in extra-parochial Places, or Messuages or Seats belonging to any Offices, in Regard or by Reason the same have not been usually charged or assessed to any publick Taxes, &c. or in Respect of any other Messuages or Lands, in Regard the same have not been usually taxed to all publick Taxes, Church-Rates, and Parish Duties, provided they have been generally assessed to some one or more of the said publick Taxes, Rates or Duties, in Proportion to other Lands, &c. of 40 s. a Year in the same Parish.

The Statute 2 *Geo. 2. cap. 24.* enacts, That on any Election for any Member to serve for the Commons in Parliament, every Freeholder, Citizen, Freeman, Burgefs, or Person having a Right to vote, shall before he is admitted, take an Oath, in Case the same be demanded by either of the Candidates, or any two Electors, that he hath not received, or had by himself, or any Person whatsoever in Trust for him, or for his Use and Benefit, directly or indirectly, any Sum of Money, Office, Place or Employment, Gift or Reward, or any Promise or Security for any Money, Office, Place, Im-
ployment

14 Of freehold Estates, and

ployment or Gift, in order to give his vote at the Election.

This Oath the Officer taking the Poll, is to administer *gratis*, on Forfeiture of 50 *l.* to the Person that shall sue for the same, to be recovered with full Costs by Action of Debt, &c. And no Person shall be admitted to vote till he has taken the said Oath in a publick Manner, if demanded, before the Returning Officer, or others legally deputed by him. And if any Sheriff, Mayor, Bailiff, or other Returning Officer, shall admit any Person to be polled, without taking such Oath, on the same being demanded, such Returning Officer, and the Person so voting, shall forfeit 100 *l.* with full Costs.

Also every Sheriff, Mayor, Bailiff, or other Person, being the Returning Officer of any Member to serve in Parliament, shall immediately after reading the Writ for the Election, take and subscribe an Oath, that he hath not directly nor indirectly, received any Sum or Sums of Money, Office, Place or Employment, Gift or Reward, or any Bond, Bill or Note, or any Promise or Gratiuity whatsoever, either by himself, or any other Person to his Use, Benefit or Advantage, for making any Return at the present Election of Members to serve in Parliament; and that he will return such Person or Persons as shall, to the best of his Judgment, appear to him to have the Majority of legal Votes. Which Oath any Justice of Peace of the County, City, Corporation or Borough where the Election shall be made, or in his Absence, any three of the Electors are required and authorized to administer.

If any Person who hath, or claims to have a Right to vote in any such Election, shall ask, receive or take any Money or other Reward, by

Freeholders in general. 15

way of Gift, Loan, or other Device, or agree or contract for any Money, Gift, Office or Employment, &c. to give his Vote, or to refuse or forbear giving his Vote in any such Election; or if any Person by himself, or any one employed by him, shall by any Gift or Reward, or any Promise, Agreement or Security for any Gift, &c. corrupt or procure any Person to give his Vote, or to forbear giving the same in any Election; the Offender in any of the Cases aforesaid, shall for every Offence forfeit 500 *l.* and being lawfully convicted thereof, shall be for ever disabled to vote in any Election of Members of Parliament, and to hold or enjoy any Office or Franchise in any City, Borough, or Town Corporate, as if such Person was naturally dead.

But if any Person so offending, shall within twelve Months next after such Election, discover any other Offender against this Act, so that he be thereof convicted, the Person discovering and not having before that Time been convicted of any Offence, shall be indemnified and discharged from all Penalties and Disabilities: And no Person shall be made liable to any Incapacity, Disability, Forfeiture or Penalty by this Act imposed, unless Prosecution is commenced within two Years after such Incapacity, &c. shall be incurred; or the same be carried on without Delay.

And by this Act, such Persons shall be deemed to have legal Votes, which have been so declared by the last Determination in the House of Commons; which Determination concerning any County, Shire, City, Borough or Place, shall be final to all Intents and Purposes. It is ordained that this Statute shall be read publickly before the Electors on any Election; and also once a Year at the Quarter-Sessions.

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16 Of Freehold Estates, and

As to who are or ought to be the Electors in Boroughs, it has been formerly resolved, that where there is no Charter or Custom to the contrary, the Election of Members of Parliament in Boroughs is to be made by all the Housholders, and not Freeholders only: And it is held, that the Commonalties of Cities, and Commoners of Boroughs, being the ordinary Sort of Citizens, Burgeses, or Freemen, have generally the Right of Elections.

An Action of the Case lies against the Officers of a Borough, &c. for refusing an Elector's Vote, who hath a Right thereto; according to the Opinion of the Lord Chief Justice *Holt*, who gave these Reasons for it: That a Freeholder hath a Right to vote, by Reason of his Freehold, and it is a real Right, and the Value of his Freehold was not material till the Statute which requires it to be 40 s. *per Annum*; that as it is *Ratione liberi Tenementi* in Counties, so in ancient Boroughs they have a Right to vote *ratione Burgagii*; and in Cities and Corporations, it is *ratione Franchisia*, and a Personal Inheritance, vested in the whole Corporation, but to be used by the particular Members; that this is a noble Privilege, which intitles the Subject to a Share in the Government and Legislature; and if a Person hath a Right to vote, he must have a Remedy to assert that Right, and refusing to take his Vote, is an Injury and Damage actionable. 1 *Salk.* 19.

There shall be a free and indifferent *Election* made of Knights of the Shire in full County, notwithstanding any Request or Command to the contrary; and after such Election the Names of the Parties chosen shall be written in an Indenture under the Seals of the Electors, which Indenture so sealed and tacked to the Writ for Election shall be the Sheriff's Return thereof. 7 *H.* 4. No Person
2
standing

Freeholders in general.

17

standing Candidate to be elected, shall by himself, or any other ways at his Charge, make any Present of, or allow Money, Meat, Drink, or Entertainment, to any Electors, or to any County, City or Town, &c. in general, after the *Teste* of the Writ of Summons, or issuing out of the Writ of Election, or after any Place of a Member becomes vacant; but for this Bribery he shall be incapacitated to serve as a Member of Parliament. Forty Days are to be between the *Teste* and Return of Writs of Summons to Parliament; and Sheriffs three Days after Receipt of Writs to elect Members, must issue out Precepts to Boroughs, &c. who are to proceed to Election in eight Days: And the Sheriff is to hold his County Court, at the most publick and usual Place for Election of Knights of the Shire, to poll the Freeholders, make no unnecessary Adjournments, and deliver Copies of the Poll, &c. under Penalty of 500 *l.* Also Sheriffs and other Returning Officers shall make their Returns in fourteen Days after the Election, on the like Penalty: False Returns of Members incur double Damages, &c. and Persons making Contracts, or giving any Reward for a false or double Return, shall forfeit 300 *l.* And the Secretary at War shall issue Orders for Removal of all Soldiers that shall be quartered in any City, Town, or Borough, where any Election shall be, until after the Poll taken, &c. Statutes 7 & 8 *W. 3. c. 4, 7 & 25. 10 & 11 W. 3. c. 7. 8 Geo. 2. c. 30.*

The Qualification of Freeholders, &c. to be Justices of Peace.

IN every County there shall be assign'd for the keeping of the Peace, one Lord, and three or four of the most worthy Persons as Justices, with some learned in the Law, who shall have Power to arrest and chastise Rioters, Barretors and other Offenders, and to imprison and punish them according to Law; also to bind People of evil Fame to the good Behaviour, and to hear and determine Felonies and Trespasses done in the County, by the Statute 34 Ed. 3.

These Justices of Peace are to be made of the most sufficient Persons dwelling in the same Counties, by the Advice of the Chancellor and the King's Council, without taking others residing in foreign Counties to execute that Office; except Lords, Justices of Assise, and the King's chief Stewards, of the Duchy Lands in the North and South Parts: And Lords named in the Commission of the Peace, the Judges of both Benches, Serjeants at Law, and the King's Attorney, are excepted as to Residence in the same County, by another Statute. 2 Hen. 5. Stat. 2. c. 1. 2 H. 5. Stat. 1. c. 4.

None shall be Justices of Peace, (except in Cities and Corporation Towns, &c. and Persons learned in the Law) unless they have Lands or Tenements of the Value of 20 l. a Year; and if any be put into the Commission, not having Lands to that Value, and do not within one Month after Notice thereof acquaint the Lord Chancellor therewith; or do sit, or make any Warrant or Precept by Force of such Commission, he shall forfeit 20 l. to be divided

Freeholders in general. 19

vided between the King and the Prosecutor. This is by the old Statute 18 *Hen. 6. c. 11.*

The Qualification of Justices of Peace at this Day is 100 *l.* a Year, made so by a late Statute 5 *Geo. 2. c. 18.* by which it is enacted, That no Person shall be capable of being a Justice of the Peace, or to act as such, for any County in *England* or *Wales*, who shall not have an Estate of Freehold or Copyhold, to and for his own Use and Benefit, in Possession for Life, or some greater Estate in Law or Equity, or for Years determinable upon Life, or a certain Term originally created for Twenty-one Years or more, in Lands, Tenements or Hereditaments, lying in *England* or *Wales*, of the clear yearly Value of 100 *l.* above what will satisfy all Incumbrances affecting the same. And no Attorney, Solicitor or Proctor, shall be a Justice of Peace within *England* or *Wales*, during the Time he shall continue in such Business and Practice.

If any Person, not qualified as this Act directs, shall take upon himself the Office of a Justice of Peace, or do any act as such, the Person so offending shall forfeit 100 *l.* for every Offense, one Moiety to the King, and the other to such Person as will sue for the same, to be recovered by Action of Debt, &c. But this Act shall not extend to any City or Town, being a County of itself, or to any other City, Town or Liberty, having Justices of Peace within their respective Limits by Charter, Commission, or otherwise; who may be Justices in such Manner only as they might have been, if this Statute had not been made.

And it shall not incapacitate the Eldest Son or Heir Apparent of any Lord, or Person qualified to serve as Knight of a Shire by the Act to secure the Freedom of Parliaments, to be a Justice of the

Peace for any County : Nor shall it exclude the Officers of the Board of *Green-Cloth*, from being Justices of Peace within the Verge of his Majesty's Palaces ; or the Commissioners and Principal Officers of the Navy, and the two Under-Secretaries in each of the Offices of Principal Secretary of State, from being Justices of the Peace, for such Maritime Counties and Places, where they usually have been Justices.

Nor shall this Statute extend to any of the Heads of Colleges or Halls in the Universities of *Oxford* and *Cambridge*, but that they may be Justices of Peace in the Counties of *Oxford*, *Berks*, and *Cambridge*, and the Cities and Towns within the same, and execute the Office as heretofore they used to do.

Besides the King's Commission to Justices of Peace, there are a great many particular Statutes, directing them to act ; but not being for my immediate Purpose, I shall only insert three of the general Laws, one old Statute, and two late Acts. By the 4 *Hen. 7. c. 12.* the King commands all Justices of the Peace diligently to execute their Office, according to their Commissions and the Laws and Statutes ordained, to the End that his People by that Means living in Peace, and enjoying their own, Husbandry may flourish, and Wealth and Prosperity increase : He also chargeth all, both Rich and Poor, that shall suffer any Grievance from others, in any Thing that a Justice of Peace may hear and determine, that they forthwith make Complaint thereof to the next Justice ; and having no Remedy there, to the Justices of Assise, if it be not long before their coming into that Country ; but if it be, then to the Chancellor for the Time being : And the King will send for the Justice so neglecting his Duty, and in Case he shall find him
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Freeholders in general.

21

guilty of it, will cause him to be put out of the Commission, and otherwise punished. And this Statute shall be proclaim'd at every Quarter-Sessions, in Pain that every Justice there present, when it is not so proclaimed, shall forfeit 20 s. to the King.

By 9 *Geo. 1. cap. 7* For the greater Ease of Justices of Peace for any County of this Realm, it is enacted, That if any Justice shall happen to dwell in any City, or other Precinct, that is a County of itself, situate within the County at large, for which he shall be appointed a Justice, tho' not within the same County; such Justice may grant Warrants, take Examinations, and make Orders for any Matters, which any one Justice may act in, at his own Dwelling-house, tho' it be out of the County where he is authorized to act as a Justice, and in some City, or Place adjoining, that is of itself a County: And such Warrants and Orders of any such Justice, and the Acts of any Constable, Tithingman, Headborough, Overseer of the Poor, Surveyor of the Highways, or other Officer in Obedience to any such Warrant or Order, shall be good in Law, tho' it happens to be out of the Limits of the proper Precinct or Authority.

But nothing herein shall give Power to the Justices for the Counties at large, to hold their General Quarter-Sessions in Cities or Towns that are Counties of themselves; nor empower Justices, Sheriffs, Bailiffs, Constables, Headboroughs, Tithingmen, or any other Peace-Officers of such Counties at large, to act or intermeddle in any Matters arising within the said Cities or Towns; but all such Actings to be as formerly.

The Act 5 *Geo. 2. cap. 19.* ordains, That upon Appeals to the General or Quarter-Sessions for any County or Precinct, against Orders made by Justices

of Peace, the Justices assembled at such Sessions shall cause Defects of Form in the Orders to be amended without Costs, and proceed to hear the Merits of the Orders, and to make such Determinations thereupon as by Law they ought, in Case there had not been any Defect of Form.

And no *Certiorari* shall be allow'd to remove any Order, unless the Party prosecuting it shall enter into a Recognizance with sufficient Sureties, before one or more Justices of the Peace where such Order shall have been made, or before one of the Judges of the King's Bench, in the Sum of 50 *l.* with Condition to prosecute without wilful Delay, and to pay the Party, in whose Favour the Order was made, within one Month after such Order shall be confirm'd, his Costs to be taxed; and in Case the Person prosecuting the *Certiorari* shall not enter into such Recognizance, or perform the Conditions aforesaid, it shall be lawful for the Justices to proceed and make further Orders as if it had not been granted.

The Recognizance so to be taken shall be certified into the Court of King's Bench, and there filed with the *Certiorari* and Order removed thereby; and if the said Order shall be confirm'd, the Persons intitled to the Costs, within ten Days after Demand made thereof, upon making Oath of such Demand and Refusal of Payment, shall have an Attachment for Contempt, and the Recognizance shall not be discharged until the Costs be paid, and the Order complied with.

*The Qualification of Freeholders to serve
on Juries, &c.*

BY our ancient Law, in all Cases for the Trial of Issues, Jurymen are to be return'd from the County where the Fact complained of was done. And they are to be Freemen, indifferent, and not outlawed, or infamous: Men attainted or convicted of any Crime, ought not to serve on Juries, nor Aliens generally; and Infants, Clergymen, Apothecaries, &c. are exempted by Law from serving on Juries.

No more Jurors shall be summoned in one Assise than Twenty-four: And old Men above seventy Years of Age, and diseased Persons may not be put upon Juries. The Jurors impanell'd must be the next Neighbours, most sufficient, and least suspicious, or the Officer returning them shall forfeit double Damages. And in Case Jurors are accused of Bribery, they shall be tried presently by a Jury then taken: Also if a Juror take any Thing of either of the Parties to give his Verdict, he shall pay ten Times so much as taken, or suffer a Year's Imprisonment. By Statutes 13 & 28 Ed. 1. 34 & 38 E. 3. See more, at the End of this Head, Stat. 23 H. 8.

The Qualification of Jurors has undergone great Variations in former Times: For by the 13 Ed. 1. it was but 20 s. *per Annum*, and if the Assises were taken out of the County, 40 s. a Year. The Statute 21 E. 1. made it 40 s. *per Annum* in Lands, and 5 l. a Year, to be impanell'd out of their proper Counties; but this not to extend to Juries in Corporations. None to be on any Inquest upon Trial of the Death of a Man, or in any Plea Real or Per-

24 Of Freehold Estates, and

sonal, where the Debt, &c. amounts to forty Marks, who hath not Lands of 40 s. a Year above Reprizes, by 2 *H. 5. c. 3.* And the Lands and Tenements of that Value are to be Freehold. *Stat. 35 H. 8.* The Statute 27 *Eliz. c. 6.* increases the Qualification of Persons to serve on Juries, from 40 s. to 4 *l. per Annum*: And Jurors are to have 10 *l. per Annum* at least above Reprizes, of Freehold or Copyhold, and Tales-Men 5 *l.* a Year, by the 4 & 5 *W. & M. c. 24.*

Constables and Headboroughs of Towns and Parishes in each County, shall yearly at the General Quarter-Sessions of the Peace, in the Week after the Feast of *St. Michael*, return a true List in Writing of the Names and Places of Abode of all Persons within their Precincts, that are qualified to serve on Juries, between the Age of Twenty-one and seventy Years, which List they shall give to the Justices, and they are to cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff of the County or his Deputy, on or before the first of *January* next following, and cause the said List to be fairly entered in a Book, and kept among the Records of the Sessions: And no Sheriff shall impanel or return any Person to serve in any Jury at the Assises, Gaol-Delivery, &c. that shall not be named in the said List. Constables or Headboroughs failing to make such Return of Lists of Jurors, shall forfeit 5 *l.* to the King, made 10 *l.* by a subsequent Act 7 & 8 *W. 3. c. 32. 3 Ann. c. 18.*

Every Summons of Persons qualified to serve on Juries, shall be made by the Sheriff or his Officer, at least six Days before the Day on which they ought to appear, shewing to such Persons the Warrant under Seal of Office, wherein they are nominated to serve; and if any Juror to be summoned be absent from his usual Habitation, a Note in Writing

Writing under the Hand of the Officer, to that Effect, shall be left at his Dwelling house, with some Person there inhabiting. In Case the Sheriff, his Deputy or Bailiff, shall summon any Freeholder or Copyholder otherwise than as aforesaid, or neglect his or their Deputy, or shall for Favour or Reward allow of any Exemption to any Person who ought to serve, being under the Age of seventy Years, such Sheriff, &c. shall incur the Forfeiture of 20 *l.* to the Party grieved, or who else will sue for the same. *Stat. 7 & 8 W. 3.*

There shall be only one Panel, consisting of Forty eight Freeholders and Copyholders, and no more, each Person having 80 *l.* a Year in Lands, return'd to serve on the Grand Jury; and no more than ten Panels of Twenty-four Jurors each shall be return'd in Civil Causes at any Assises for the County of *York*, unless where Special Juries are directed by Rule of Court: And none shall be return'd to serve on any Jury at the Assises, Gaol-Delivery, or Sessions of the Peace for the said County of *York*, above once in four Years. The Inhabitants of the City of *Westminster* shall be exempted from serving in any Jury at the Sessions of the Peace for the County of *Middlesex*. And this Act extends not to the City of *London*, nor to any other County of any City or Town, or any Town Corporate that hath Power by Charter to hold Sessions of Gaol-Delivery, or of the Peace. *Ibid.*

By the late Act 3 *Geo. 2. c. 25.* The Persons required by the Statute 7 & 8 *W. 3. cap. 32.* for the Ease of Jurors, and better regulating of Juries, shall make and give in true Lists of Jurors qualified according to the 4 & 5 *W. & M.* from the Rates of Parishes, and on Request to any Parish Officer who hath in his Custody any of the Rates for the Poor or Land-Tax, shall have free Liberty
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26 Of Freehold Estates, and

to inspect such Rates, and take the Names of Freeholders or Copyholders so qualified therefrom; and shall yearly, twenty Days at least before *Michaelmas*, upon two or more *Sundays*, fix on the Door of the Church, or other Place of Religious Worship within their several Precincts, an exact List of all the Persons intended to be return'd to the Quarter-Sessions, as qualified to serve on Juries; and leave a Duplicate of such Lists with the Church-warden or Overseer of the Poor, to be perused by the Parishioners, to the End Notice may be given of Persons qualified omitted, or of Persons inserted by Mistake who are not so, &c. and the Lists being set right by the Justices of Peace at their Quarter-Sessions, are to be entered in the Book kept by the Clerk of the Peace for that Purpose.

The Constables, Tithingmen or Headboroughs, are to subscribe their Lists of Persons qualified to serve on Juries for their respective Parishes, and attest the Truth of them upon Oath before one or more Justices of Peace; and then deliver them to the High Constables of the Hundreds or Divisions whereto they belong, who shall deliver the said Lists attested on Oath, that no Alteration hath been made therein, &c. to the Justices in Sessions: And returning Officers wilfully omitting Freeholders qualified, or inserting any that ought to be omitted, &c. shall forfeit 20 s. on Conviction before a Justice; and being certified to the Quarter-Sessions, the Justices there shall direct the Clerk of the Peace to insert or strike out the Name of any Person who by the Certificate shall appear to have been thus omitted or inserted in the Lists, contrary to the Meaning of this Act. Duplicates of the Lists when thus adjusted, to be transmitted to the Sheriffs of Counties, by the Clerk of the Peace, during

during the Sessions, or within ten Days after, in order to returning Juries out of the said Lists, under the Penalty of 20 *l.* And the Sheriffs, or their Under-Sheriffs, shall enter the Names of the Persons in a Book alphabetically, with their Additions, and Places of Abode, &c.

And if any Sheriff, Under-Sheriff, Bailiff, or other Officer who hath the Return of Juries, shall summon and return any Persons to serve on any Jury in any Cause to be tried before the Justices of Assise, &c. whose Name is not inserted in the Duplicates of the Lists aforesaid; or the Clerk of Assise, or Judge's Associate, shall Record the Appearance of any Person summoned and return'd, who did not really appear; they shall be fined not exceeding 10 *l.* nor less than 40 *s.* The like Penalty is inflicted on Sheriffs taking Money to excuse Persons from serving: And the Judges of Assise may fine the Sheriffs, &c. not above 5 *l.* for returning Jurors, that have served two Years before in any County, except of York, &c. Also Sheriffs are to enter the Names of those who have serv'd in a Book, and give Certificates thereof, &c.

Every Sheriff, or other Officer, to whom the Return of the *Venire Facias Juratores*, or other Process for the Trial of Causes before Justices of Assise, in any County of England shall belong, shall upon the Return of every Writ of *Venire Facias* (unless in any Cause to be tried at Bar, or in Cases where a Special Jury shall be struck by Rule of Court) annex a Panel to the Writ, containing the Names, Additions and Places of Abode, of a competent Number of Jurors, named in such Lists, not less than Forty-eight in each County, nor more than Seventy-two, without Direction of the Judges appointed to go the Circuit, who if they see Cause by Order under their Hands may direct a greater

28 Of freehold Estates, and

greater or lesser Number; and the Persons named in such Panels shall be summoned to serve on Juries at the next Assizes for the Counties to be named in such Writs, and no other.

And the Name of each Person summoned and impanelled, with his Addition and Place of Abode, shall be written in distinct Pieces of Parchment or Paper, of equal Size, and be delivered by the Under-Sheriff to the Judge's Marshal, and he is to cause them to be rolled up all in the same Manner, and put together into a Box or Glass; and when any Cause is brought on, some indifferent Person, by the Court's Direction, shall in open Court draw out twelve of the said Papers of Names, one after another; and the twelve Persons so first drawn, and appearing, if not challenged, their Names being marked in the Panel, and they sworn, shall be the Jury to try the Cause; but if any are challeng'd, or do not appear, then a further Number is to be drawn till there be a full Jury, &c. and the Names of the Jury after sworn, shall be kept apart in some other Box or Glass, till they have given in their Verdict, and the same is recorded; and then these Names shall be rolled up again, and returned to the former Box, to be kept with the other Names undrawn, as long as any Cause remains to be tried.

If a Cause comes on, before the Jury in any other Cause shall have brought in their Verdict, the Court may order twelve of the Residue of the Papers to be drawn in the like Manner as before, for the Trial of such Cause: But where a View shall be allow'd in any Cause, so many Names only shall be drawn to be added to the six Viewers of the Lands or other Things in Question, as after all Defaults, &c. shall make the Number of twelve to be sworn for Trial. And Jurors whose
Names

Freeholders in general. 29

Names shall be drawn, if they make Default in Appearance, after being called three Times, on Oath made that they were lawfully summoned, (unless some reasonable Cause of Absence be proved to the Satisfaction of the Judge) shall forfeit and be fined not exceeding 5 *l.* nor under 40 *s.* as the Judge shall think fit to inflict.

The Courts of *King's Bench*, *Common Pleas*, and *Exchequer* at *Westminster*, upon Motion made in Behalf of his Majesty, or on the Motion of any Prosecutor, or Defendant, in an Indictment or Information, &c. or on Motion of any Plaintiff or Defendant, in any Action, Cause, &c. depending or to be brought in the said Courts; they may in any of the said Cases order a Jury to be struck before the proper Officer of each Court, for the Trial of any Issue joined, and triable by a Jury of twelve Men, in such Manner as *Special Juries* are usually struck in those Courts, upon Trials at Bar: But the Person who shall apply for such Jury, shall pay the Fees for striking it, and have no Allowance for the same. And where a Special Jury shall be ordered by Rule of any of the said Courts, in any Cause arising in a City, or County of a City or Town, the Sheriff or Under-Sheriff of such City, &c. shall bring the Books or Lists of Persons qualified to serve on Juries within the same, out of which the Jurors ought to be return'd, &c. in like Manner as the Freeholders Book is brought, in order to the striking of Juries for Trials at the Bar, in Causes that arise in Counties at large; and the Jury shall be struck by the proper Officer out of such Books or Lists.

Persons having Estates, held by Lease for the Term of 500 Years or more, or 99 Years, or any other Term determinable on Lives, of the yearly Value of 20 *l.* above the reserved Rent payable thereout,

30 Of Freehold Estates, and

thereout, their Names shall be inserted in the Lists, and Freeholders Book; and such Persons may be summoned and impanelled to serve on Juries, &c. The Sheriffs of *London* shall not impanel or return any Persons as Jurors, to serve at the Sessions of *Oyer and Terminer*, &c. held for the City, who are not House-keepers within the said City, and have Lands, &c. or Personal Estate of 100 *l.* Value; who may be challenged, and examin'd on Oath of the Truth thereof. And Sheriffs of any County, City or Place, shall not return any Person to serve on a Jury for the Trial of any capital Offence, that would not be qualified to serve in Civil Causes; also the same Challenge may be had against him, &c.

And by 4 *Geo. 2. c. 7.* All Leaseholders upon Leases where the improved Rents shall amount to 50 *l. per Annum*, over and above Ground-Rents or other Reservations, shall be liable to serve upon Juries; but no Person is to be returned to serve as a Juror at *Nisi Prius* in the County of *Middlesex*, who has served in two Terms or Vacations before. The Act 3 *Geo. 2.* for Regulation of Juries, and the 4 *Geo. 2.* are made perpetual, by the Statutes 6 *Geo. 2. c. 37.*

According to the Common Law, where a Trial is for any Thing which concerns the Sheriff or Under-Sheriff, the Coroner is to return the Jury: And in Cases wherein it has been conceived an indifferent Jury would not be return'd between Party and Party by the Sheriff; the Court of *B. R.* upon Motion has ordered such Sheriff to attend the Secondary of the Court, with his Book of Freeholders of the County, and the Secondary, in the Presence of the Attornies on both Sides, was to strike a Jury. And on a Cause of Consequence to be tried at Bar, the Court will make a Rule for
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the Secondary to name Forty-eight Freeholders, and each Party is to strike out twelve, one at a Time, and the Remainder to be the Jury for the Trial, which is what is called a Special Jury : Also a Jury of Merchants may be return'd to try an Issue between two Merchants, touching Merchant Affairs ; and where an Alien is a Party, the Jury is to be half Foreigners and half *English*, but it is not necessary that the Foreigners be all of the same Country. 2 *Lill. Abr.* 122, 123, 124.

If a Juror appears, and refuseth to be sworn, or to give any Verdict ; and if he endeavours to impose upon the Court, or is guilty of any Misbehaviour, he may be fined : A Juryman withdrawing from his Fellows, or keeping them from giving their Verdict, without alledging any Reasons for it, is fineable ; but not if he differs from them in Judgment. Jurors have no Power to meddle with any Matters which are not in Issue ; and they are fineable if unlawfully dealt with to give a Verdict ; tho' they may be excused for giving their Verdict contrary to Evidence, or against the Direction of the Judge ; for the Law supposes the Jury may have some other Evidence than what was given in Court, and they may not only find Things of their own Knowledge, but they go according to their Consciences. *Dyer* 53. *Vaugh.* 144, 149.

The Jury may take upon them the Knowledge of the Law, and give a general Verdict, and it will be good ; but in Cases of Difficulty, it is best to find the Special Matter, and leave it to the Judges to determine what is the Law upon the Fact. And after the Evidence is given, the Jury are to be kept together till they bring in their Verdict, without Meat, Drink, Fire or Candle, otherwise than with Leave of the Court ; and the Court may not give them Leave to eat or Drink out of Court. If Ju-
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32 . Of Freehold Estates, and

rors after sworn eat and drink contrary, tho' the Verdict is good, they may be fined; and if it be at the Charge of either Party, the Verdict is void: If they agree to cast Lots for their Verdict, or to bring in Guilty, or Not guilty, as the Court shall seem inclined, they are liable to a Fine. 1 *Inst.* 227. *Cro. Jac.* 21.

In Capital Cases of Life and Member, a Verdict must be actually given by the Jury; and if they do not agree upon it, they may be carried round the Circuits, and shall not be discharged till they do: In Civil Cases, on Nonsuits in Causes, &c. and often when the Evidence hath been heard, if the Parties doubt of the Verdict, the Jury may be discharged. Jurors in a Civil Cause giving a false or corrupt Verdict, Attaint lies against them; in which Case being found guilty, they are punishable at Common Law by Loss of Lands and Goods, their Houses to be rased, and their Bodies cast into Prison; and the Party is to be restored to all that he lost by their false Verdict: But this is altered by Statute, for now a pecuniary Penalty is appointed, and Fine and Ransom at the Discretion of the Court. 23 *H.* 8.

In Writs of Attaint against Jurors, of Plea of Land of the yearly Value of 40 *s.* or more, or of Goods or Chattels Personal worth 40 *l.* &c. Sheriffs shall not impanel any but such as have Freehold or Inheritance worth 20 *l.* *per Annum*, to try the Attaint 15 *H.* 6. Instead of Attaint, &c. where the Verdict is supposed to be given against Evidence, it is at this Time usual to have a new Trial granted.

*Qualification of Freeholders and others to
kill Game, and erect Dovecotes, &c.*

THE Persons qualified to keep Guns and Dogs, &c. to kill Game, are Lords of Manors, Persons having Lands, or some other Estate of Inheritance in their own or their Wife's Right, of 100 *l.* *per Annum*, or for Term of Life, or Lease for 99 Years of 150 *l.* a Year; and by the Exception of the Act, the eldest Sons and Heirs of Esquires, or other Persons of higher Degree, and Owners of free Warrens, &c. in respect thereof. And Lords of any Manors or other Royalities, not under the Degree of an Esquire, may by Writing under their Hands and Seals, authorize one or more Game-keepers; who may seise all Guns, Greyhounds, setting Dogs, or other Dogs to kill Hares, &c. and Tramels, Hays, or other Nets, Hare-pipes, Snares, or Engines for taking Hares, Conies, Pheasants, Partridges, or other Game, used within such Manors, by Persons not qualified by this Statute to do the same. Also such Game-keepers and others, by Warrant from a Justice of Peace, may search the Houses of Persons prohibited, as shall be suspected to keep such Guns, Dogs, or Nets, &c. and seise them for the Use of the Lord of the Manor, or otherwise destroy them. *Stat. 22 & 23 Car. 2. cap. 25.*

And Constables, Headboroughs and Tithingmen, by a Justice's Warrant, may and are required to enter into and search Houses of suspected Persons not qualified to kill Game; and in Case any Game shall be found, the Offender is to be carried before the Justice, and if he do not give a good Account how he came thereby, or produce the Party of

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whom he bought it, &c. he shall be convicted of such Offence by the said Justice, and forfeit for every Hare, Partridge, &c. or other Game, any Sum not under 5 s. or exceeding 20 s. one Moiety to the Informer, and the other to the Poor of the Parish where the Offence was committed, to be levied by Distress and Sale of his Goods; and for want of Distress, shall be sent to the House of Correction for any Time not exceeding a Month, nor less than ten Days, there to be whipt and kept to hard Labour. 4 & 5 W. & M. c. 23.

If Persons not qualified by Law, do keep or use any Dogs, Nets, Snares, or other Instruments for Destruction of Game, and shall be convicted as aforesaid, they shall be subject to the Pains and Penalties aforesaid: And if any inferior Tradesman, Apprentice, or other dissolute Person, shall hunt, or hawk, &c. (unless in Company with the Master of such Apprentice qualified by Law) they are liable to the Penalties of this Act, and may be sued for Trespass in coming upon any Person's Ground, and Damages. Soldiers killing Game without Leave, shall forfeit 5 l. an Officer, and 10 s. a Soldier. *Ibid.*

By the 5 Ann. cap. 14. If any Higler, Chapman, Carrier, Inn-keeper, Victualler, or Alehouse-keeper, have in his or their Custody any Pheasant, Hare, Partridge, Moor, Heath-Game, or Growse, every such Higler, &c. (except the Game be sent by some Person qualified to kill it) shall be carried before some Justice of Peace, and upon View or Oath of the Offence, shall forfeit for every Hare, Pheasant, &c. 5 l. to be divided between the Informer and the Poor of the Parish, and levied by Distress by Warrant of the Justice; for want of which, the Offender shall be committed to the House of Correction, for the first Offence for three Months without

without Bail, and for every other Offence four Months.

The like Pains and Penalties are inflicted upon Persons keeping or using any Greyhound, Dog, Net or Engine to destroy the Game, not being qualified: But the Conviction must be in three Months after the Offence; and if any Person who shall destroy, sell or buy any Hare, Pheasant, Partridge, &c. shall within three Months make Discovery of any Higler, Chapman, Inn or Alehouse-keeper, or Victualler, that hath bought, sold, or offered, or had the same in Possession, so as one be convicted of such Offence; the Discoverer shall be discharged of the said Penalties, and receive the same Benefit for his Discovery as other Informers.

Justices of the Peace within their Liberties, and the Lords of Manors within their respective Manors, may take away any Hare, Pheasant, &c. or other Game, from such Higler, &c. and Persons not qualified to kill the same, found in their Custody; and also may take away such Dogs, Nets, and Engines, to their own Use. And any Lord of a Manor may impower his Game-keeper to kill any Game whatsoever; but if the Game-keeper, under Colour of such Power to kill or take for the Use of the Lord, sell or dispose thereof without his Consent or Knowledge, upon Conviction of the Offence before a Justice of Peace on the Lord's Complaint, such Game-keeper shall be committed to the House of Correction for three Months, and be kept to hard Labour.

By 9 *Ann. c. 25.* the Statute of 5 *Ann.* is made perpetual; and no Lord of a Manor shall appoint more than one Game-keeper in one Manor, with Power to kill the Game; whose Name shall be entred with the Clerk of the Peace, and he shall give him a Certificate thereof, paying 1 s. and if

any Game-keeper, not having his Name thus enter'd, or who is not otherwise by Law qualified to kill Game, shall kill any Hare, Pheasant, Partridge, &c. or if any other Person, not qualified in his own Right, shall sell, or expose to Sale, any such Hare, Pheasant, Partridge, Moor, Heath-Game, or Growse, he shall for every Offence incur such Forfeitures as are inflicted by the said Act on Higlers, Carriers, Inn-keepers, &c. for buying, selling or having in their Custody any Game.

And if any Hare, Pheasant, &c. shall be found in the Shop, House or Possession of any Person not being qualified in his own Right to kill Game, or intitled thereunto by some Person qualified, the same shall be adjudg'd an Exposing to Sale: And where any Persons shall take, kill or destroy Hares, &c. in the Night-time, they shall likewise be subject to the same Forfeiture, to be recovered in the same Manner as prescribed by the aforesaid Act.

If any Person shall between the first Day of *July* and the first of *September* in any Year, by Hays, Tunnels, or other Nets, drive and take away any Wild Fowl of any Kind, in the Molting Season, the Offender being convicted thereof before one Justice of the Peace where the Offence shall be done, and by the Oath of one credib'e Witness, shall forfeit 5 s. for every Fowl, one Moiety to the Informer, the other to the Poor, to be levied by the Justice's Warrant, by Distress and Sale of the Offender's Goods; and for want thereof, to be committed to the House of Correction for a Time not exceeding one Month, nor less than fourteen Days, there to be whipt and kept to hard Labour. And the Justice shall cause such Hays and Nets to be seised, and destroyed in his Presence.

The Act 3 *Geo. I. c. 11.* ordains, that no Lord or Lady of a Manor shall appoint any Person to be

Freeholders in general. 37

a Game-keeper, with Power to take or kill any Hare, Pheasant, Partridge, or other Game, unless such Person be qualified so to do by the Laws of this Realm, or be truly a Servant to the said Lord or Lady, or immediately employ'd by them to kill the Game for their sole Use; and no Lord or Lady shall authorize any Person, not qualified by Law, to keep or use any Greyhounds, setting Dogs, Hays, Lurchers, Guns, Tunnels, or any other Engines to destroy the Game: And any Person that is not so qualified, or not being a Servant of any Lord, &c. who under Pretence of any Deputation to him granted shall take or kill any Game, or use any Greyhounds, &c. being convicted thereof, shall for every Offence be liable to the Penalties inflicted by 5 *Ann. c. 14.*

By the Statute 8 *Geo. 1. cap. 19.* Whenever any Person shall, for any Offence committed against any Law in Being for the better Preservation of the Game, be liable to any Penalty, upon Conviction before any Justice or Justices of Peace; it shall be lawful for any one to proceed against him to recover the said Penalty, either by Information and Conviction before a Justice, or by Action of Debt, &c. in any Court of Record, wherein the Plaintiff, if he recovers, shall have double Costs. But it is provided, that all Actions to be commenced by force of this Statute, shall be brought before the End of the next Term after the Offence committed; and that no Offender against any Laws for Preservation of the Game, shall be prosecuted for the same Offence, both by the way directed by this Law, and that of any of the former Laws; but that in Case of any second Prosecution, the Person so doubly prosecuted may plead in his Defence the prior Prosecution depending, or the Conviction or Judgment had thereon.

38 Of Freehold Estates, and

A Man was indicted for shooting in a Gun, and killing Hares, but it was omitted shewing that he was not worth 100 *l.* a Year; and the Court ordered, that the Party should shew he was worth so much to discharge him. 2 *Keb.* 582. But where a Person was convicted before a Justice of Peace upon the Statute, for keeping a Gun, not having 100 *l.* *per Annum*; the Conviction being removed into the King's Bench was quashed, for not saying when the Defendant had not 100 *l.* a Year to qualify him; for it might be he had such Estate at the Time he kept the Gun, tho' not at the Conviction, and the Offence and Time ought to be certainly set forth. 3 *Mod.* 280.

If a Person in hunting starts a Hare upon his own Ground, and follows and kills it in the Ground of another, yet still the Hare is his own, because of the fresh Pursuit; but if a Man starts a Hare on another Person's Ground, and there hunts and kills it, he is subject to an Action of Trespass, tho' such Action is seldom brought, being frivolous. In Case any Person hunts on the Ground of another, such other Person cannot justify the Killing of his Dogs, according to some of our Books: But it has been otherwise adjudged. *Cro. Car.* 553. 44. 2 *Roll. Abr.* 567. None may take Pheasants or Partridges in another Man's Ground, without Licence, on Pain of 10 *l.* by an ancient Statute 11 *H.* 7.

In an Action brought by a common Informer, by Virtue of the Act 8 *Geo.* 1. upon the Statute 5 *Ann.* for the Penalty of 15 *l.* The Plaintiff declared on two several Counts, one for 10 *l.* for killing two Partridges, the other for 5 *l.* for keeping an Engine to destroy the Game, not being qualified, &c. Here the Plaintiff had a Verdict for 5 *l.* only, and Judgment was entered accordingly. And it was moved, that he might enter the Verdict on either of the Counts

Counts in the Declaration, the Defendant intending to move in Arrest of the Judgment; because, tho' he might not be qualified by the Statutes of this Land to keep a Gun, yet he may be otherwise qualified by Law, as being Huntsman to a Nobleman, who in coming up to the Parliament may kill a Deer or two in the King's Forests, &c. *Pasch. 10 Geo. 1. Mod. Caf. in L. and E. 238.*

As to Freeholders erecting Pigeon-Houses or Dovecotes.

IN former Times it was held, that none might newly erect a Dovecote but the Lord of the Manor; and if any other did it, he was to be punished in the Court-Leet, but no Action lay for any particular Man, for the Infiniteness of the Actions that may be brought. *5 Rep. 104.*

But since on a Question, whether the new Erecting a Dovecote by a Freeholder, were a Nuisance punishable in the Leet, it was resolv'd by the whole Court upon great Deliberation, that it is not a Nuisance punishable or inquirable in a Court-Leet, for a Man hath a Property and Privilege in Doves. And in another great Case of this Nature, the Judges of the King's Bench all agreed, That the Building a Dovecote by a Freeholder, who is not Lord of the Manor, nor Owner of the Rectory, and Storing it with Doves, is not any Nuisance punishable in the Leet; because nothing is inquirable and punishable there, but that which is a common Nuisance to all People: And this Erecting a Dove-house cannot be a Nuisance but to those whose Corn they eat, and not to all Persons. Therefore it is no Nuisance inquirable there; also if it were a common Nuisance, neither the Lord of

40 Of Freehold Estates, and

the Manor, nor the Parson, could erect a Dove-house more than any other Freeholder; for none can prescribe to make a common Nuisance, by reason it cannot have a lawful Beginning by Licence, or otherwise, it being an Offence against the Common Law. *Cro. Jac.* 490. *Poph.* 141.

There are many Statutes for the preserving of Doves, as a Statute made in the Time of King *Edward* the First; and the Statute 18 *Edw.* 2. which gives Direction, that the killing of Doves shall be presented at the Leet; and the 18 *Eliz.* c. 5. ordains that Doves shall not be shot. But in the above Case three Judges held, that if Doves or Pigeons came upon a Man's Land, he may kill them, and the Owner hath no Remedy; tho' the Person that kills them is to take Care, that he doth not do it by any Means prohibited by the Statutes: And *Montague* Chief Justice said, if those who have not any Lands at all should erect Dove-houses, and increase a Multitude of Pigeons, to the Grievance of the Country, it may be inquired of by the Justices of Assize, &c. but not by every Lord in his Leet, for that Court is only to redress Nuisances within the Precinct thereof; and the Erecting of a Dove-house by any one is not in itself a Nuisance, but the Replenishing it with Pigeons, and suffering them to fly abroad into the Country, which is out of the Leet. *Cro. Jac.* 491, 492.

It is allowed on all Hands, that a Man may have a Dovecote by Prescription. A Lord of a Manor may build a Dove-house upon his Land, Parcel of the Manor, and this he may do by Virtue of his Right, as Lord thereof; but a Tenant of the Manor cannot do it without his Licence, for he can have no such Right: Yet if he does, it is not punishable as a common Nuisance, but the Lord for this particular Nuisance shall have Action on the Case,

Freeholders in general. 41

Cafe, or an Affise, as he may for building an House to the Nufance of his Mill. 3 *Salk.* 248.

Any Person unlawfully killing or taking Pigeons shall be committed to the common Gaol for three Months, by two or more Justices of the Peace, unless he pay immediately to the Use of the Poor of the Parish, 20 s. for every Pigeon so killed or destroyed: But if he doth not pay the Penalty, and is committed, he may after Commitment for a Month be discharged, on becoming bound before two Justices, with two Sureties in 20 l. with a Condition never to offend again in the like Nature. *Stat.* 3 *Jac.* 1. c. 27.

The Stealing of Pigeons in a Pigeon-house, shut up so that the Owner may take them, is Felony; as well as taking away Fish in a Trunk, or Poultry, &c. 1 *Hawk.* P. C. 94.

I have thus far treated of the Qualifications of Freeholders, under several Heads, to do certain Acts, and enjoy divers Privileges beyond other Persons, with the Matters concerning the same; and now I proceed to their particular Estates, Tenures or Holdings, in the Method I have proposed, for their Information therein.

Of the Fee-simple Estate, held by Freeholders.

A Fee-simple Estate is where a Man hath Lands or Tenements to hold to him and his Heirs for ever: And it is called in *Latin Feodum Simplex*, for *Feodum* is the same that Inheritance is, and *Simplex* is as much as to say, lawful or pure; so that Fee-simple signifies a lawful or pure Inheritance. But he that hath this Estate by our Law is called a Tenant, because he holdeth of some superior Lord by some Service. *Litt. Sect. 1.*

And if a Man would purchase Lands or Tenements in Fee-simple, he ought to have these Words in the Grant, To have and to hold to him and to his Heirs; for 'tis the Words *his Heirs*, that make the Estate of the Inheritance: If a Person makes a Purchase of Lands to hold to him for ever, or to him and his Assigns for ever; in either Case he hath but an Estate for Term of Life, for want of the Words *his Heirs*, which alone make an Estate of Inheritance in all Feoffments and Grants. *Ibid. 1 Co. Inst. 1.*

At the Common Law all Estates were Fee-simple; and all other Estates and Interests are derived out of it, wherefore there must be a Fee-simple at last in some Body: To have Fee-simple implies that it is without Limitation to what Heirs, but to Heirs generally; and a Man cannot have a greater Estate. A Fee-simple cannot come after a Fee-simple; nor can a Remainder, for it is an absolute Estate, and nothing may come after it: But tho' Fee-

Fee-simple be the most ample Estate of Inheritance, it is subject to many Incumbrances; as Judgments, Statutes, Mortgages, Fines, Jointures, Dower, &c. And there is a Fee-simple Conditional, where the Estate is defeasible by not performing the Condition; and a qualified Fee, which may be defeated by a Limitation, &c. *Litt. 4 Inst. 206. Dyer 33. 1 Inst. 18.*

It is observ'd by Sir *Edward Coke* in his Reports, that an Estate of Inheritance is Fee-simple or Fee-tail; an Estate of Fee-simple is either an Estate of Inheritance absolute and indeterminable, as where Lands are given to a Man and his Heirs, he has such a pure and absolute Estate that can never determine; or a Fee-simple determinable, which may be in two Manners, that is, expressly derived out of an absolute and pure Estate in Fee-simple, or implicit, and derived out of an Estate-tail: And that out of an absolute Estate in Fee, also in two ways; First, by Condition, as upon a Mortgage, and that is called Fee-simple conditional; Secondly, by Limitation, in Case one enfeoffs another of Lands or Tenements, To hold to him and his Heirs, so long as a third Person hath Heirs of his Body, and this is called a Fee-simple limited and qualified; and in both these Cases, the whole Estate in the Land is in the Feoffee, and therefore no Remainder or Reversion can be expectant upon either of them. *10 Rep.*

The implied Estate in Fee-simple deriv'd out of an Estate-tail, is when Tenant in Tail bargains and sells his Estate by Deed indented and inrolled to one and his Heirs, and afterwards levies a Fine to him and his Heirs with Proclamations, according to the Statute; he has an Estate in Fee-simple, as long as the Tenant in Tail hath Heirs of his Body, derived out of the Estate-tail; but this is a more inferior

inferior and subordinate Estate in Fee-simple than the other two afore-mentioned, for upon this a Reversion or Remainder may be expectant; and yet he who has any such Estate of Inheritance may plead that he is seised of the Land in his Demesne as of Fee, without shewing the Beginning of his Estate, as well where he hath a Fee-simple, derived out of an Estate-tail, as a Fee-simple conditional or limited. 10 Rep. 97, 98.

Judge *Vaughan* says, that Lord Coke's Case, If Land be given to *H.* and his Heirs, as long as *B.* hath Heirs of his Body, with Remainder over in Fee, the Remainder is void, being a Remainder after a Fee-simple, tho' that Fee-simple determines when no Heirs are left of the Body of *B.* he doubts whether this be Law or not, in regard that when such a base Fee shall determine for want of Issue of the Body of *B.* the Land returns to the Grantor and his Heirs, as a kind of Reversion, and if there can be a Reversion of such Estate, there is no Reason why a Remainder may not be granted of it. *Vaugh.* 269.

'Tis true, a Remainder cannot depend upon an absolute or pure Fee-simple by necessary Reason; for when all a Man hath of Estate is given or gone away, nothing remains but the absolute Fee simple. A Fee simple Estate determinable upon a Contingent, is a Fee-simple to all Intents, but not so durable as absolute Fee: And all Fee-simples are unequally durable, for one will Escheat sooner than another by the Failure of Heirs. An Estate of Fee-simple determines in a Bastard with his Life, if he want Issue: But an Estate to a Man and his Heirs as long as *J. S.* has any Heir, which is no absolute Fee simple, is doubtless as durable as the Estate in Fee that *J. S.* hath to him and his Heirs, which is an absolute Fee-simple. *Ibid.* 269, 273.

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Where a Man gives and devises Lands to his younger Son, paying such a Sum of Money unto another Person, the Devisee hath a Fee-simple; but if he do not pay the Money accordingly, his Estate shall determine, by the same Limitation, and shall go to the Heir without any other Limitation, and the Quantity of the Money, be it great or small, is not material. And it was here said, that upon one Fee-simple, another Fee-simple cannot be limited; tho' by common Experience it is evident, that on a Fee simple determinable, another Fee-simple may be limited. But two Fee-simples that may stand in several Persons distinct, when they meet in one Person cannot do so, for the greater and absolute Fee doth swallow up the base and limited Fee. 2 Leon. 114. Hob. 323.

By the Law of *England*, no Person can regularly take to himself an Inheritance in Fee-simple by Deed, without the Word *Heirs*, as I have already mentioned: Though in Cases where the Word *Heirs* is wanting, it has been held, that if there are other Words equivalent, an Estate in Fee will pass; but this must be understood where the Interest passeth by the Consideration only, without any other Ceremony in the Law, and not where the Consideration together with another Ceremony directs the Estate; as for Instance, a Bargain and Sale of Lands to a Man for ever, in Consideration of Money and natural Affection, there the Consideration alone directs the Estate, and Conscience saith, that the Bargainee hath as great an Estate in the Land as the Bargainor could convey, which must be an Estate in Fee, there being no farther Ceremony to compleat it; (for where natural Affection is Part of the Consideration, the Deed is good without Inrolment.) But where a Man in Consideration of Money, makes a Feoffment

ment of the Lands to another for ever, there the Consideration only doth not direct the Estate, but another Ceremony is required to perfect it, and that is Livery and Seisin, therefore the Feoffee shall have but an Estate for Life. *Dyer* 167. 2 *Nels. Abr.* 928.

The Word *Inheritance* is not only intended where a Man hath Lands or Tenements by Discent of Inheritance, but every Fee-simple or Tail which a Person has by his Purchase may be said to be an Inheritance, because his Heirs may inherit him: And in a Writ of Right that a Man brings of Lands, that was of his own Purchase, the Writ shall say, which he claims to be his Right and Inheritance; and so it is in divers other Writs, as appears by the Register. But there are some Persons who have Inheritance, that have it neither by Discent, nor properly by Purchase, but by Creation; as when the King doth create any Person an Earl, or Baron, to him and his Heirs, or to the Heirs Male of his Body, &c. he hath an Inheritance by Creation. And if a Man be created a Baron by Writ, whereby he is called to Parliament, he hath a Fee-simple in the Barony without any Words of Inheritance; but if he be created by Letters Patent, the Estate of Inheritance must be limited by apt Words, or it will be void. *Lit. Sect.* 9. 1 *Inst.* 16.

When a Rent or Annuity is granted to one and his Heirs, it is a Fee Personal: And of such Things whereof a Man may have a manual Occupation, Possession or Receipt, as of Lands, Tenements, Rents, and such like, there a Man shall say in his Count and Plea, that such a one was seised in his Demesne as of Fee; but of those Things which do not lie in manual Occupation, &c. as of the Advowson of a Church, or any such like Thing,

there he must say, that he was seised as of Fee, and not in his Demesne: And the *Latin* is in one Case, *Quod talis seifitus fuit in Dominico suo ut de feodo*; and in the other Case, *Quod seifitus fuit ut de feodo, &c.* Lit. Sect. 10. See Salk. 237.

Here the Word *Dominicum*, that is Demesne, is that Inheritance, wherein a Man hath proper Dominion or Ownership, as it is distinguished from the Lands which another doth hold of him in Service; and also that which is manually occupied, manured, and possessed for the necessary Sustainment, Maintenance and Supportation of the Lord and his Household, and savoureth *de domo*, of the House, either for his or their Board and Sustainment, or received in Rents, &c. for bearing and discharging all necessary Charges. Of an Advowson, wherein a Person hath as absolute Ownership and Property as he hath in Lands or Rents, he shall not say he is seised *in Dominico suo ut feodo*, because that Inheritance, favouring not *de Domo*, cannot serve for sustaining of him and his Household, nor can any Thing be receiv'd for the same, for defraying of Charges. 1 Inst. 17.

As to Heirs to Fee-simple Estates, a Child born, tho' he lives but an Hour, has the Fee of Lands vested in him as Heir. And there is a lineal Heir, as the Son of a Person; and a collateral Heir, as Brother, &c. Yet a Man can have no right Heir, to take Lands during his Life: An eldest Son shall not take by the Name of Heir in the Life-time of his Father. And a Man cannot raise a Fee-simple Estate to his right Heirs, by the Name of Heirs, as a Purchase by Conveyance or otherwise; but in such Case the Heir shall be in by Discent. Dyer 99. 2 Leon. 70. Hob. 30.

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There are some Persons that may not be Heirs by our Law; as a Bastard, born out of lawful Wedlock; an Alien, who is born out of the King's Allegiance, tho' in Wedlock; a Man attainted of Treason or Felony, whose Blood is corrupted: And not only an Alien, but if one be made Denizen by Letters Patent, he cannot be Heir; tho' 'tis otherwise of a Person naturalized by Act of Parliament. If an Alien Christian or Infidel purchase Houses or Lands to him and his Heirs, altho' he can have no Heirs, yet he is of Capacity to take a Fee-simple, but not to hold; for upon an Office found, the King shall have it by his Prerogative. A Bastard, by Continuance, may be Heir against a Stranger; and having gotten a Name by Reputation, may purchase by his reputed or known Name to him and his Heirs, tho' he can have no Heir but of his Body: An Hermaphrodite may be Heir, and take according to that Sex which is most prevalent; but a Monster, that hath not human Shape cannot be Heir, altho' a Person deformed may. Ideots and Lunaticks, Persons excommunicate, attainted in *Premunire*, Outlaws in Debt, &c. may be Heirs. 1 *Inst.* 7, 8. 2. 2 *Danv. Abr.* 552, 553.

The eldest Son, after the Death of his Father, is his Heir, &c. And if there be Grandfather, Father and Son, and the Father dies before the Grandfather, and after the Grandfather dieth seised; the Land shall go to such Son of the Father, and not to any other Children of the Grandfather: And this Heir is called *Hares jure Representationis*; but if the Father die without any Child, the next eldest Brother shall have the Land in Fee-simple as Heir, and for Want of a Brother, it belongs to the Sisters of the Father. *Bro. Abr.* 303.

A Man having Issue on'y a Daughter, dies leaving his Wife with Child of a Son, which is afterwards born; here the Son after his Birth is Heir to the Lands, but 'till then the Daughter is to have the same. If a Man having Lands in Fee-simple dieth, and his Wife soon after marries again, and pretends she is with Child by her former Husband, in this Case the Writ *Ventre inspiciendo* lies for the Heir; to search her, and try it by a Jury of Women, and if found, she is to be kept in Custody 'till delivered, &c. But if a Person seised of Lands in Fee hath Issue a Daughter, who is Heir apparent, she in the Life of her Father cannot have this Writ; because it is given only to the Heir to whom the Land is descended, and she is not Heir, but Heir apparent; and the Law doth not give the Heir apparent any Writ, for it is not certain that he shall be Heir. *Perk. 521. F. N. B. 227. 1 Inst. 8. Cro. Jac. 685.*

At Common Law, a Man cannot be Heir to Goods and Chattels; but by Custom, Heir-Looms, as the first Bed, Table, &c. go to the Heir, though they are household Goods. The Heir is favour'd in Law; for the Ancestor could not by the Common Law, convey away Lands or Tenements in Fee simple by Will from his Heir at Law, without Consent of the Heir: But by the Statute 32 Hen 8. of Wills, the Law is alter'd in that Point; and all Persons having a sole Estate in Fee-simple of any Lands or Tenements, (except Feme Coverts, Infants, Persons *Non sana memoria*, &c.) may give and devise the same, by Last Will and Testament, at their free Will and Pleasure. A Man may not only give and grant, but may charge Fee-simple Lands by Deed or Will, so as to be charged in the Hands of the Heirs: Tho' an Heir is not bound by the Bond of the Ancestor, unless he is

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expressly bound; and a Man shall never bind his Heir to Warranty, where he himself was not bound. A Grant of an Annuity must be for a Man and his Heirs, to bind the Heir, altho' there are Assets or Lands, &c. descending; and though named, an Heir shall not be bound, except there be Assets. 3 Rep. 30. 1 Inst. 386. 144. Cro. Jac. 570.

If an Heir hath Assets in Fee simple, he is chargeable upon Specialties: And a collateral Heir, may be so charged for the Debt of his Ancestor; here if a Son happens between, who dies, he must be mentioned as Uncle and Heir of the Son, who was Heir of the Debtor, &c. Also it is said, that Debt lies against the Heir of an Heir upon an Obligation of the Ancestor, who binds himself and his Heirs, unto the tenth Degree. Where he that hath a Trust in Lands or Tenements dies, leaving a Trust in Fee-simple to descend to the Heir; this Trust will be Assets by Discent in the Heir's Hands, and be liable to the Obligation of his Ancestors: And if any Heir has made over Lands fallen to him, Execution is to be had against him to the Value of the Land, &c. Dyer 303. Cro. Car. 151. Noy 56. Stat. 29 Car. 2. 3, 4 & 5 W. & M.

The Word *Heirs* includes Assigns in Grants, &c. And upon a Lease for Years of Lands of Inheritance, rendering Rent to Executors and Assigns, the Heir shall have the Rent. It is held, the Words *his Heirs* extend unto all Heirs, the most remote, born and to be born; and under Heirs, the Heirs of Heirs are comprehended *in infinitum*: If Lands are given to a Man and his Heirs, all his Heirs are so totally in him, that he may give his Lands to whom he will. But if Land be given or granted
to

to a Man and his * Heir in the Singular Number, and not to his Heirs in the Plural, he can have but an Estate for Life; for his Heir cannot take a Fee-simple by Descent, because he is but one, and therefore in that Case the Heir shall have nothing.
2 Lev. 13, 14. 1 Inst. 9.

And what is farther observable here, is the Conjunction *and* his Heirs; for if a Man gives Lands to one, To hold to him or his Heirs, he hath only an Estate for Life by reason of the Uncertainty. In Case a Person gives Land to two Persons, and their Heirs, such Persons have joint Estates during Life, and several Inheritances: And a Gift to one and his Children, and their Heirs, 'tis holden makes a Fee-simple to all jointly that are alive. But if a Man gives Land unto two, To have and to hold to them and Heirs, omitting *their*, they have an Estate but for Life, because it is uncertain as to the Heirs: And yet it is said, if Lands are given to one Man and Heirs, omitting *his*, that notwithstanding a Fee-simple may pass. 1 Inst. 8. Plowd. 28. 5 Rep. 83.

If a Man gives his Land to another and his Wife, and after their Decease, the Remainder to their Children; here whether they have or have not Children at the Time, such Man and his Wife shall have only Estates for their Lives, and not the Fee-simple. And if one give his Lands in *Dale* to J. S. for Life, and after to his next right Heir, and to his right Heirs for ever; by this J. S. hath only an Estate for Life: But if the Lands be given to J. S. for his Life, and after to the Heirs or to the

* See where the Word *Heir* was held by Rolle C. J. to be the same with *Heirs*, and to make a Fee-simple. *Styles* 249, 273.

right Heirs of *J. S.* he will then have Fee-simple. And in Case a Person devises Land to his Wife for her Life, and after her Death to his three Daughters, equally to be divided; and if one dies before the other, then one to be Heir to the other, equally to be divided; this last Clause gives a Fee to the Daughters. *6 Rep. 166. 1 Rep. 66. 1 Rol. Abr. 833.*

Where Lands are given or granted by Fine, Deed or Will in Possession, Reversion, or Remainder, to a Man and his Heirs; it will be a Fee-simple: So if the Gift or Grant is to him and his Heirs Males, or Females; and yet in these two last Cases, if it were by Will, it would be an Estate-tail. And with Regard to the Distinction of Heirs, if a Devise be to one for Life, Remainder to the right Heirs or Heirs Male of *J. S.* he must be both Heir, and Heir Male, that takes this Remainder, and the Son of a Daughter who is Heir, shall not have it: Also when Land is given to the Issues of *J. S.* who hath several Children, they all take; but if it be to his Heirs Male, and he hath several Sons, there but one takes. *Plowd. 134. Hob. 32. Skinn. 208, 209.*

If Lands are granted to *A.* for Life, Remainder to *B.* for Life, the Remainder to the right Heirs of *A.* here *A.* hath a Fee-simple Estate: And where a Gift or Grant is to a Man's Wife during Life, after to him in Tail, and after to his right Heirs; in such Case he will have a Fee-simple expectant upon the Estate-tail, as a Reversion. If Land be granted to a Man and his Heirs, tho' the *Habendum* of the Grant is to him for Life only, if Livery of Seisin be made, it is an Estate in Fee-simple; for the *Habendum* shall be rejected as repugnant and void. *Broke Est. 34, 35. 2 Rep. 91, 24.*

A Lease is made to one for Term of Years, and after it is granted that the Lessee should have the Land to him and his Heirs, by the Rent of 10 *l.* a Year; if the Grantor makes Livery upon it, it is a Fee-simple: But without that, it is but an Estate for Years. If one do give or grant Lands to *J. S.* and his Heirs; and if he die without Heirs, that *J. D.* shall have the same to him and his Heirs: By this *J. S.* hath a Fee-simple, and *J. D.* will have no Estate at all. This is because nothing can be after a Fee-simple, when it is thus granted. 1 *Inst.* 217. *Dyer* 4, 33.

The Lord Coke, treating of Grants to Bodies Politick, says, if Lands be given to a sole Body Politick or Corporate, as to a Bishop, Parson, Vicar, Master of an Hospital, &c. there to give him an Estate of Inheritance in his Politick or Corporate Capacity, he must have the Words in the Grant, To have and to hold to him and his Successors, without which there passeth no Inheritance; for as the Heir doth inherit to the Ancestor, so the Successor does succeed to the Predecessor, and the Executor to the Testator. But if a Grant or Feoffment be made to a Mayor and Commonalty, or any other Corporation Aggregate of many Persons, they have a Fee-simple without the Word *Successors*; by reason in Judgment of Law they never die: And so it is where Lands are given to the King by Deed inrolled, tho' neither Successors or Heirs are named. A Man grants Lands to *J. S.* a natural Person, and his Successors, according to *Littleton*, it createth no Fee-simple in him; tho' if it be an ancient Grant it must be expounded as the Law was taken at the Time thereof; and a Devise to a Man and his Successors carries a Fee, for here Successors shall be intended Heirs. 1 *Inst.* 8, 9. *Cro. Jac.* 416. 1 *Roll. Abr.* 835.

54. Of Fee-simple Estates,

If the King by his Letters Patent giveth Lands to a Dean and Chapter, to hold to them and their Heirs and Successors, altho' they be Persons in their natural Capacity, as to them and their Heirs, yet because the Grant is made to them in their Politick Capacity, it shall enure to them and their Successors: And where the King grants Lands to a Man, To hold to him and his Successors or Heirs, this Grant shall be to him and his Heirs. But a Priest incorporate having taken a Lease to him and his Successors for a Hundred Years, after took a Release from the Lessor to him and his Successors; and it was adjudged, that by the Release he had no Estate of Inheritance, but for Life, for he had the Lease in his natural Capacity, and it could not go in Succession, but should go to his Executors or Administrators as a Chattel. 1 *Inst.* 9. *Dyer* 48. 4 *Rep.* 65.

The general Rule that Heirs must be inserted in Grants and Feoffments to create a Fee-Simple Estate, hath some Exceptions: For if the Father make a Feoffment to the Son, To have and to hold to him and his Heirs, and the Son enfeoffeth the Father as fully as he enfeoffed him, without more Words, by this the Father hath a Fee-simple. On a Fine *Sur Conuſance de droit come ceo, &c.* a Fee-simple will pass by general Words, in respect of the high Nature of that Fine, and thereby is implied that there was a precedent Gift in Fee: And if there be three Coparceners or Jointenants, and one of them Releases to the other two generally; or where a Lord releases to his Tenant, or the Grantee of a Rent, &c. release to the Tenant of the Land generally all his Right; or if a bare Right, &c. is released by a Disfeisor to the Disfeisor; in all these particular Cases there
need

need not be this Word *Heirs*. 39 *Affis*. 12. 41 *E*. 3. *Plowd*. 248. *Dyer* 263.

And altho' a set Form of Words, and the Word *Heirs* particularly are necessary in Deeds to convey an Inheritance, yet they may be dispensed with in last Wills, at the Time of making which it is presumed, that the Testator is *inops Consilii* and in a Hurry; and therefore if a Man devises Lands to another *in perpetuum*, or in Fee simple, or to one and his Assigns for ever, (but not without saying *for ever*) or to him and his; or that such a one shall be universal Heir, &c. in every Case of this Kind, a Fee passes by the Will; for it is evidently the Devisor's Intention, that the Gift should continue beyond the Life of the Devisee, and Wills are more favour'd in Law than any Deed or Conveyance, to fulfil the Intent of the Testator. A Devise to a Man and his Blood makes a Fee-simple; and to his Seed, an Estate-tail. 1 *Inst*. 9. 1 *Bulst*. 222. *Bendl*. 11. *Moor* 57.

If *A*. devises Land to *B*. to give, sell, or do what he pleases with it, these Words, by the Intent of the Devisor, convey a Fee to *B*. or if I appoint that *B*. shall have my Inheritance, if the Law allows it, or that he shall be Heir of my Lands; here he shall have a Fee. In Case a Devise be thus: I release all my Lands to such a one and his Heirs, he hath a Fee-simple, because the Intention of conveying appears: And if Lands are devised by Will to a Man, in Consideration that he will release 100 *l*. due to him to the Testator's Executors, he has a Fee-simple Estate upon his Release of the Debt; for the Devise shall be intended for his Benefit, and an Estate for Life might be determined before he could receive 100 *l*. out of the Land. 1 *Roll. Abr*. 834. *Hob*. 2. *Bendl*. 15, 30.

A Man devised all his Lands, Tenements and Hereditaments, and all his Personal Estate, and whatever else he had in the World to a certain Person, and made him Executor, desiring him to pay his Debts and Legacies; it was adjudg'd that the Devisee had a Fee-simple. A Person by Will devises 50 *l.* to be paid in three Months; and all the Rest and Residue of his Real and Personal Estate whatsoever, he gives to his beloved Wife, whom he makes sole Executrix; by these Words, the Wife hath a Fee-simple in the Lands: Also where the Testator being seised of Copyhold and Freehold Land, devises all the Rest of his Estate, whether Freehold or Copyhold, to his Wife and Children, &c. it has been holden, that the Word *Estate* must signify the Interest he had in the Land, and so pass the Fee. 2 *Vern.* 687, 564. 4 *Mod.* 89. 2 *Chan. Ca.* 262.

The Word *Estate* doth comprehend all that a Man hath Property or Ownership in, and is divided into Real and Personal; if all a Man's Real Estate, or all his Personal Estate be devised, that only passes which is given; but all his Estate comprehends both Real and Personal: As a Release of Actions Real goes to no more, so of Actions Personal; but a Release of all Manner of Actions, extends to all Actions Real and Personal. This being the Sense of the Word *Estate*, by Devise of all a Man's Estate, it carries with it all the Estate which he has in the Land; 'tis as much as if he had devised the Fee-simple, he having a Fee: And it was resolv'd by *Holt Ch. Just.* That this Word *Estate* includes all Things Real and Personal, Lands and Rents, &c. the whole Estate of the Devisor, for all his Estate is a Description of his Fee. 1 *Cro.* 447, 442. *Skinn.* 194. 1 *Salk.* 236.

A Person made his Will, and after several Specifick and Pecuniary Legacies, gave and bequeathed all his Lands and Estate in Upper C. in the County of *Northampton*, with all their Appurtenances, to *W. E. Esq*; and died seised of that and other Estates: The Sister and Heir of the Testator exhibited a Bill in Chancery against this Will, and the Question was, whether the Defendant had an Estate in Fee-simple, or only for Life? It was here agreed, that a Devise of all his Estate would have passed a Fee; but that a Devise of all his Lands would pass but an Estate for Life, and not the Estate in Fee, which he had in those Lands; and it was said that this was only a Description of the Place where the Estate lay, and no Devise of the Interest which he had in that Estate farther than for Life: But the Master of the Rolls decreed, that the Devisee had an Estate in Fee, because the Lands passed by the first Words, and the Interest therein by the second; and if the Word *Estate* meant nothing more than the Lands, it would be useless; tho' if the Devise had been of all the Testator's Lands or Estate at such a Place, he thought that would not have passed the Fee, but must have been taken, according to the common Acceptation, for his Lands at such a Place. *Pasch. 1729. Abr. Cas. in Eq. 178.*

By my Lord *Holt*, Where a Person had devised all the Residue of his Estate to the Legatee, by him to be given to his Children as he should think convenient, with divers other extraordinary Legacies, &c. In a Will, the Testator is not tied up to Form; 'tis enough that he expresses and signifies his Meaning by any Words: And he held, that devising all his Estate, and all his Estate in such a House, was the same; and that all the Estate in the
Thing

Thing passed in either Case. *Hill. 2 Ann. 1 Salk. 237.* Where the Word *Estate* coupled with Chattels, will not carry the Fee of Lands. See *Cro. Car. 447.*

If Lands are devised to Trustees, without any Words of Limitation to support the Trust of Estates of Inheritance, they by Implication must have an Estate sufficient to support such Trust; for there is no Difference between a Devise to a Man for ever, and to a Man upon Trusts, which may continue for ever. Adjudg'd in *B. R. Pasch. 1 Geo. 2.*

Of Discents of Fee-simple Estates to Sons, and Partition among Daughters.

DISCENT by the Common Law, is defined to be where a Man hath Land of Inheritance in Fee-simple, and dieth without disposing thereof in his Life-time, so that the Land goes or descends to the eldest Son and Heir, being of Course cast upon him by Law. Where Lands or Tenements do by Right of Blood fall to any Person after the Death of his Ancestor, it is called a Discent: And this is the noblest and worthiest Means, whereby Lands are derived from one to another; because it is wrought and vested by the Act of the Law, and Right of Blood, unto the worthiest and next of the Kindred of the Ancestor. *1 Inst. 13, 237.*

It is a Maxim in Law, that in Discents the next of the worthiest Blood shall ever inherit the Lands, as the Male and all Descendants from him before the Females; and the Female on the Part of the Father, before the Male or Female on the Part of the Mother, &c. because the Female of the Part of the Father is of the worthiest Blood: And therefore among Males, the eldest Brother, and his Posterity, shall have Lands in Fee-simple, as Heir before any younger Brother, or any descending from him. Also a Sister of the whole Blood, shall be preferred and take before the younger Brother which is of Half-blood; but such a younger Brother, tho' he may not be Heir to a Brother, for want of the whole Blood, yet he may be Heir to his Father, or his Uncle. 1 *Inst.* 14. 3 *Rep.* 41.

And the famous *Littleton* says, That none shall have Land of Fee-simple by Discent as Heir to any Man, unless he be his Heir of the whole Blood, that is both of the Father and Mother, so that the Half-blood is not inheritable by Discent; for if a Man hath Issue two Sons by divers Women or Venters, and the elder purchases Land in Fee-simple, and dies without Issue, the younger-Brother shall not have the Lands, but the Uncle of the elder Brother, or his next Cousin shall have the same, by Reason the younger Brother is but of Half blood to the Elder; and he cannot be a compleat Heir, because he hath not the whole and compleat Blood. And if a Man hath Issue a Son and a Daughter by one Venter, and a Son by another Venter, and the Son of the first Venter purchase Lands in Fee and die without any Issue, in such Case the Sister shall have the Land by Discent as Heir to her Brother, and not the younger Brother; for that the Sister is of the whole Blood to her elder Brother. *Litt. Sect.* 6 & 7.

Also

Also where a Person is seised of Lands in Fee-simple, and hath a Son and a Daughter by one Wife, and a Son by another, and then dies, and the eldest Son enters and dies without Issue; here the Daughter shall enjoy the Land, and not the younger Son, tho' he is Heir to the Father but not to his Brother: But if the eldest Son doth not enter on the Land after his Father's Death, but dieth before any Entry made by him; then the younger Brother may enter, and shall have the Land as Heir to his Father. When the elder Son in the Case aforesaid enters after the Death of the Father, and hath Possession; there the Sister shall have the Lands, because the Possession of the Brother of a Fee-simple Estate makes the Sister to be Heir: Though in Case there be two Brothers by several Venters, and the eldest is seised of Land in Fee, if he die without Issue, and his Uncle enter as next Heir to him, who also dies without leaving any Issue; now the younger Brother may have the Lands as Heir to the Uncle, because he is of the whole Blood to him, altho' he be but of the Half-blood to his elder Brother. *Ibid. Sect. 8.*

In some particular Cases, tho' the Son doth not enter into Lands descended in Fee-simple, the Sister of the whole Blood shall inherit; and where the eldest Son doth enter, yet the younger Brother of the Half-blood shall be Heir. And concerning the Words, *seised in Fee-simple*; if Lands are given to a Man and his Wife, and the Heirs of their two Bodies, the Remainder to the Heirs of the Husband, and they have Issue a Son, then the Wife dies, and he takes another Wife, and hath Issue another Son; the Father dieth, the eldest Son enters and dies, without Issue, here the second Brother of the Half-blood shall inherit the Land by

by Discent, because the eldest Son by his Entry was not actually seised of the Fee-simple, being expectant, but only of the Estate-tail. 1 *Inst.* 14, 15. *Dyer* 98. *Cro. Eliz.* 412.

If a Man purchase Lands in Fee-simple, and dies without Issue, the Land shall descend to his next Cousin collateral of the whole Blood, how far so ever he be from him in Degree, for he is Heir to him; but this is intended where such Person hath neither Brother nor Sister, and here is implied a Division of Heirs, *viz.* Lineal, who shall ever first inherit, and collateral: Lineal Discent is conveyed downwards in a right Line, from the Grandfather to the Father, the Father to the Son, &c. And collateral Discent springeth out of the Side of the whole Blood, as another Branch thereof, such as the Grandfather's Brother, Father's Brother, and so downward. The Right Line shall always be preferred to the cross or transversal one; and the next Cousin collateral, doth give a certain Direction to the next Cousin to the Son, and therefore the Father's Brother's Children or Offspring shall in such Case inherit before the Grandfather's, &c. *Litt. Sect.* 2. 1 *Inst.* 10. *Plowd.* 444.

But upon the Word *next*, this Case is put: A Man hath Issue two Sons *A.* and *B.* and then dieth, *B.* has also two Sons *C.* and *D.* and dies, *C.* his eldest Son hath Issue and dieth: *A.* purchases Lands in Fee-simple, and dies without any Issue, *D.* is his next Cousin, and yet shall not inherit the Land by Discent, but the Issue of *C.* who is accounted in Law next of Blood: For there is a next of Kin by Right of Representation, and Right of Propinquity or Nearness of Blood; and the Issue of *C.* represents the Person of *C.* and if *C.* had lived he would have been legally the next of Blood:
And

And whenever the Father, if he had liv'd, should have inherited, his lineal Heir by Right of Representation shall inherit, tho' another be nearer of the Blood. Yet if a Man hath two Sons, and the eldest Son hath Issue a Son and dies, if a Remainder is limited to the next of his Blood, the younger Son shall take it by Purchase, altho' the other is his Heir by Discent. 3 Rep. 40. Hob. 33.

If where there is Father and Son, the Father hath a Brother, that is Uncle to the Son, and the Son doth purchase Land in Fee-simple, and die without Issue, in the Life time of his Father, the Uncle shall have the Land as Heir to the Son, and not the Father, yet the Father is nearer of Blood; because it is a Maxim in Law, that Inheritances may lineally descend, but not ascend: Though if in this Case, on the Son's dying without Issue, his Uncle enter into the Land as Heir to the Son, (as by Law he ought) and after the Uncle dieth without Issue, the Father being living, there the Father shall have the Land as Heir to the Uncle, and not as Heir to the Son; for that he comes to the Land by collateral Discent, not by lineal Ascend. Litt. Sect. 3.

In case the Uncle doth not enter into the Land, then the Father cannot inherit, for there is implicitly another Law Maxim, that a Man who claims as Heir in Fee-simple to any one by Discent, must make himself Heir to him that was last seised of the actual Freehold and Inheritance; so that if the Uncle did not enter, he had but a Freehold in Law, and no actual Freehold, but the last that was actually seised was the Son, to whom the Father cannot make himself Heir, to take by Discent from him. And it is here to be observed, that tho' the Uncle is Heir, he is not absolutely so; for if after the

the Descent to him, the Father hath Issue a Son or a Daughter, that Issue shall enter upon the Uncle: It is the same, if a Man having Issue a Son and a Daughter, the Son purchaseth Land in Fee and dieth without Issue, the Daughter shall inherit the Lands; but if the Father hath afterward Issue a Son, this Son shall enter into the Land as Heir to his Brother, and if he hath Issue another Daughter but no Son, she will be Coparcener with her Sister. Notwithstanding the Discent of the Reversion of Lands from a Son to his Son, on that Son's dying without Issue, the Daughters shall inherit. 1 *Inst.* 11. 1 *And.* 31.

Where the Son purchases Lands in Fee-simple, and dies without Issue, the Land shall descend to those of the Blood on the Father's Side as Heirs to him, before any of the Blood on the Mother's Side: But if he hath no Heir on the Part of his Father, then the Land shall descend to the Heirs on the Part of his Mother. Though if a Man marries an Inheritrix of Lands in Fee-simple, who hath Issue a Son, and dies, and the Son enters into the Lands, as Son and Heir to his Mother, and after dies without any Issue; in such Case the Heirs of the Part of his Mother ought to inherit, and not the Heirs of the Part of the Father: And if he hath no Heir on the Part of the Mother, the Lord of whom the Land is held, shall have it by Escheat: In like Manner it is, if Land descends to the Son, of the Part of the Father, and he entereth, and afterwards dieth without Issue, this Land shall descend to the Heirs on the Part of the Father, not to the Heirs on the Part of the Mother; and if there be no such Heir on the Part of the Father, the Land shall escheat: And here appears a Diversity, where the Son purchaseth Lands or Tenements in Fee-simple, and where he comes to them

by Descent either on the Part of his Mother or Father. *Litt. Sect. 4.*

It is here to be understood, that the Father hath two immediate Bloods in him, *viz.* the Blood of his Father, and the Blood of his Mother, both which Bloods are of the Part of the Father, and they must be both spent before the Heir of the Blood of the Part of the Mother shall inherit: The Mother hath also two immediate Bloods in her, that is, the Blood of her Father, and of her Mother; so that on a Man's Marrying, and having a Son by his Wife, such Son has four immediate Bloods in him, two of the Part of his Father, (*viz.*) of the Families of his Father and Mother, and two on the Side of the Mother, *i. e.* of the Families of her Father and Mother; and so in both Cases *ad infinitum.*
1 Inst. 12. Plowd. 445. 3 Rep. 41.

If a Father having purchased an Estate, the same descends to a Son, who enters and dies without Heirs; the Land shall descend to the Heirs of the Father or Mother of the Father, and not to the Heirs of the Mother of the Son, &c. for they are not of the Blood of the first Purchaser: And none can inherit any Lands as Heir, but only the Blood of such first Purchaser. But where a Son makes a Purchase, and there is no Heir on the Father's Side, the Land goes to the Heirs on the Mother's Side; because they are of the Blood of the Son of the first Purchaser, and he had the Blood of both Father and Mother. *Noy's Max. 23.*

There is a Maxim in Law, that whenever Lands descend from the Part of the Father, the Heirs of the Part of the Mother shall never inherit; and likewise where Lands do descend from the Part of the Mother, the Heirs of the Part of the Father shall never inherit. Though the Lord Coke says, if a Man gives Lands to one, to hold to him and

his Heirs on the Part of his Mother, yet the Heirs of the Part of his Father shall inherit; for no Man can institute such a new Kind of Inheritance. And if a Person be seised of Lands as Heir of the Part of the Mother, and makes a Feoffment in Fee, and taketh back an Estate to him and his Heirs; this is a new Purchase, and if he die without Issue, the Heirs of the Part of the Father shall first inherit: Also if a Man so seised, maketh a Feoffment in Fee upon Condition, and dies, the Heir of the Father's Part, which is the Heir at Common Law, shall enter for the Condition broken; but the Heir on the Mother's Part shall enter upon him and enjoy the Land. A Person being seised as Heir on the Part of his Mother, makes a Feoffment, to the Use of him and his Heirs; here the Use being nothing but a Trust and Confidence, shall ensue the Nature of the Land, and descend to the Heir on the Part of the Mother. 1 *Inst.* 12, 13. 1 *Rep.* 100. *Dyer* 139. Where a Fine levied by the Heir, and Render back again, with Remainder to his right Heirs, alters the Discent to Heirs on Part of the Father, as a Feoffment and Re-feoffment at Common Law. See 1 *Show.* 92, 93.

A Son purchased Land in Fee, and died without Issue, having no Brethren; it was a Question, whether the Brother of his Grandmother on the Part of his Father, or the Brother of his Mother, should have the Lands by Discent? And it was held, that the Brother of the Grandmother should inherit as Heir to him; for tho' he is not of the Name, he is of the most ancient and worthy Blood by the Male Side of his Father. If there be three Brethren, and the middle Brother purchaseth Lands in Fee-simple, and dieth without any Issue; the elder Brother shall have the Land by Discent, and not the Younger, &c. And so it is, in case the

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youngest

youngest purchase Lands, and dies without Issue, the Land shall descend to the eldest Brother, and not the Middle; because as to Descents between Brethren, the eldest is the most worthy of Blood, to inherit to them as well as to the Father. *Dyer* 314. *Plowd.* 442. *Litt. Sect.* 5.

But there is a Difference in Descents from Father and Mother to their Children, and Descents between Brothers and Sisters; for it sufficeth that a Son or Daughter be of the Blood of either Father or Mother, *viz.* which of them have the Inheritance, to inherit them; but the Brothers and Sisters must of Necessity be of the same Father and Mother, or else they cannot inherit one another. *Noy* 168.

In Cases of Descent between Brothers, the Law takes no Notice of the Disability of their Father, but only of the immediate Relation of Brothers as Brothers, and not in respect to the Father; (tho' he is the Foundation of their Consanguinity) so that the Father's Disability doth not hinder a Descent between them; for 'tis not the natural Blood, but the Civil Qualification of it by the Law of the Land, which makes them inheritable one to the other. Therefore where a Man had Issue a Son and a Daughter, and was attainted of Treason, and died; the Son purchased Lands, and died without Issue; it was here adjudg'd that notwithstanding the Attainder of the Father, the Daughter shall take by Descent from her Brother; because the Descent between them was immediate, and the Law doth not regard the Disability of the Father. *4 Leon.* 5. *1 Nels. Abr.* 645.

This Law extendeth not to Aunts and Nephews, tho' it doth to Brothers and Sisters: In *Courtney's Case*, *Henry Courtney* the Father had Issue *Edward*, and was attainted and died; *Edward*

ward having purchased Lands, died without Issue; adjudg'd, that neither of the Sisters of *Henry* the Father, or their Children, should inherit to these Lands purchased by *Edward* their Nephew, and yet neither he nor his Aunts were attainted; but because *Henry*, through whom the Aunts must derive their Pedigree and Consanguinity, was attainted, for that Reason the Descent to them was obstructed. *Cro. Car.* 241.

An Attainder of a Father of Treason or Felony, corrupts the lineal Blood only, to make them incapable to inherit Lands, and not the collateral Blood between the Brethren, which was vested in them before. And if a Man seised of Lands, hath Issue two Sons, and the eldest is attainted in the Life-time of his Father, and after the Father dies seised; the youngest Son shall inherit the Lands by Descent as Heir unto his Father, if the eldest Son leaves no Issue alive: 'Tis otherwise if he hath Issue, which should have inherited, but for the Attainder; for then the Land escheats. 1 *Inst.* 8. *Dyer* 48. 2 *Hawk. P. C.* 457.

According to Lord *Hale*, the lineal Descent from Father to Son is immediate; and from Grandfather to Grandson, the Father dying in the Life of the Grandfather, that he calls *mediate*, because the Father is the *Medium* through or by whom the Son derives his Title to the Grandfather: Tho' this mediate Descent, to some Purposes is immediate; for the Father so dying in the Grandfather's Life-time, the Son succeeds in Point of the Laws of Descent immediately to the Grandfather. The Descent between Brothers is immediate; the Brother by the second Venter hath the immediate Blood of the Father, which the Uncle the Father's Brother hath not, but only as they meet in the Grandfather: And the Brother of the Half-blood

is nearer in Blood than the Uncle, and therefore shall be preferr'd in an Administration; and yet the Uncle is in by Discent before such Brother, because that is a mediate Discent; but a Discent to the Brother must be immediate, if at all, so that the Half-blood impedes it. 1 *Ventr.* 415, 424.

In lineal Descents, if the Father is attainted, the Blood of the Grandfather is not corrupted; but the Father's Corruption of Blood, obstructs the Transmission of the hereditary Discent between the Grandfather and Grandson: If a Father be attaint or an * Alien, and hath Issue a Son a Denizen, and dies in the Life of the Grandfather, after which the Grandfather dies seised; the Son shall not take, but the Land shall escheat. In collateral Discent, *A.* and *B.* are Brothers, *A.* is attainted, and hath Issue and dies, and *B.* purchases Lands, and dies without Issue, here the Issue of *A.* shall not inherit; for *A.* who was the *medius* Ancestor, was disabled: And for the same Reason, if *A.*'s Issue purchaseth and dies without any Issue, *B.* his Uncle shall not inherit him. If an eldest Son be an Alien, the Law will take no Notice of him; and as he may not take by Discent, so he shall not hinder the Discent to his younger Brother. *Ibid.* 416, 417, 418.

By our Laws, where there is no Impediment, in the Right Line of Descents, Children inherit their Ancestors without Limitation; but the Ancestors may not take from their Children: In the colla-

* By Stat 11 & 12 *W.* 3. c. 6. All natural-born Subjects may inherit as Heirs, and make their Pedigree by Discent from any Ancestors, lineal or collateral, tho' the Father or Mother, or other Ancestor of such Persons, thro' whom they claim, be Aliens born.

teral Line, the Uncle inherits the Nephew, and the Nephew the Uncle. And Lands and Tenements in Fee-simple generally descend, first to the eldest Son as Heir, and to his Children or Issue; the Sons first, in order of Birth, and for Want of Sons, to his Daughters equally as Parceners; if the eldest Son hath no Children, then to his next elder Brother of the whole Blood, and his Issue, in the same Manner; and for Want of a Brother, to his Sister or Sisters of the whole Blood, and to their Issues; if there be no Brother or Sister, to the Uncle and his Issue; and for Want of an Uncle, to an Aunt or Aunts, and their Issue; and if there be none such, then to Cousins, in the nearest Degree of Consanguinity. Also in case of Lands purchased by Brethren; after Uncles and Aunts, the Land shall descend to the Father, and the Half-blood, and their Issue; (who come in after the Father, being of the whole Blood to him, tho' not to one another) and for Want of Uncle, Aunt, Father, and Half blood, to the next of Kin in the collateral Line. *Bacon's Elem. Vaugh. 244. Wood's Inst. 218.*

In Discents of Lands of the Crown, and of Dignities, Half-blood is not any Impediment, and there is no Coparcenership in them, but the eldest Daughter takes the Whole: In Estates-tail, the Issue are in by Discent *per formam Doni*, and always of the whole Blood to the Donee; and Discent by Statute, of Fee-tail Estates, is as directed by the Manner of the Settlement or Limitation, pursuant to the *Statute Westm. 2. 13 Ed. 1. 1 Inst. 15. 27. 3 Rep. 41.*

There is a Discent of Fee-simple Estates by Custom, sometimes to all the Sons, or to all the Brothers, where one Brother dieth without Issue, as in *Gavelkind*; and here the Lands are divided be-

tween the Heirs Male, who shall inherit as Sisters do at Common Law: And sometimes to the youngest Son, as in *Borough English*; also sometimes to the eldest Daughter, or the youngest, &c. according to the Customs of Places: And these Customs go with the Land, and guide the particular Discent, altho' there be a Devise or Feoffment to the contrary, &c. 1 *Inst.* 110, 140, 175. 2 *Lev.* 138. *Dyer* 179.

In all Cases of Discent, the Heir is to make an Entry on the Lands descended: And if a younger Son enters on Lands in Fee, where the eldest Son dies having Issue; tho' many Discents are cast in his Line, yet the Heirs of the eldest Son may make an Entry upon the Land: But if the youngest Son convey away the Lands in Fee, and the Feoffee dies seised, they may not enter; nor where such youngest Son disseises the eldest, and dies seised. And if a Bastard being the eldest Son by the same Woman, enters on Lands, and enjoys it during his Life; his Entry and dying seised, makes a Title by Discent to his Children or Issue, against the lawful Children; and this Discent barreth the Right, whereas other Discents take away the Entry only of him that hath Right, and leaveth him to his Writ or Action. *Litt. Sect.* 396, 397. 1 *Inst.* 242, 244.

If one in general die seised of Land, in which another has Right to enter, and it descends to his Heir; such Discent shall take away the other's Right of Entry into the Lands, and put him to an Action for Recovery thereof; but as to a Disseisor it is where he had peaceable Possession five Years, by Statute: And such a Discent shall not toll or take away the Entry of an Infant, or Feme covert, where the Wrong was done during the Coverture, &c. Discent being created by Law, and the most
ancient

ancient Title, an Heir is in by that, before a Grant or Devise, &c. And when the Heir takes that which the Ancestor would have taken if living, he shall take it by Discent, and not by Purchase: But usually where an Estate is devised to an Heir at Law, attended with a Charge, as to pay Money, Debts, &c. in such Case he takes by Purchase, not by Discent. And there is this Difference between Purchase and Discent of Lands; if a Person takes by Purchase, a Fine, &c. may be no Bar, nor shall the Lands be common Affets. 1 *Inst.* 237. *Stat.* 32 *H. 8.* c. 33. *Dyer* 54. 126. *Style* 148. 2 *Danv. Abr.* 557. 3 *Nelf. Abr.* 30. 1 *Danv.* 577.

A Man having two Daughters, one of them had a Son, and died; the Father devised his Lands to the Son and his Heirs for ever: It was here a Question, whether the Son should take all by the Devise, or the one Moiety by Discent, and one Moiety by the Devise? For then as to that Moiety he takes by Discent, his Aunt will be Coparcener with him. And it was resolved by the Court, that the Son should take all by the Devise; and could not have a Moiety by the Discent as Heir, and a Moiety by Devise, for there can be no such Discent of a Moiety to one Coparcener as Heir; you cannot plead a Discent to one Daughter and Coheir, but it must be to all the Daughters: The Court agreed the Rule, that when a Devise to an Heir gives the same Estate which would descend, the Devise is unnecessary, and nothing operates by it, therefore it is void; but here is not a Devise to an Heir, for both the Coparceners make the Heir, and the one is not Heir without the other; so that the Grandson must take by Devise in this Case, because nothing can descend to him as one Coheir. 1 *Salk.* 242.

*As for Partitions of Fee-simple Lands,
&c. among the Daughters or Copar-
ceners,*

THE Parceners by our Common Law, are where any Man or Woman seised of Lands or Tenements in Fee-simple, or Fee-tail, hath no Issue but Daughters, and dieth, and the Tenements descend to such Daughters, who enter into the Lands descended to them, then they are called Parceners, and make but one Heir to their Ancestor: And they are termed Parceners, because by the Writ *de partitione facienda*, the Law will oblige them to make Partition; tho' they may do it by Consent, &c. 1 *Inst.* 164.

Bracton says, that Coparceners, otherwise called Parceners, are such as have equal Portion in the Inheritance of an Ancestor; and by Law are the Issue Female, which in Default of Heirs Male, come in Equality to their Ancestor's Lands. And if a Man seised of Lands in Fee-simple, or in Tail, dieth without Issue of his Body begotten, and it descends to his Sisters, they are Parceners; and in like Manner where he hath no Sisters, but the Lands descend to his Aunts, or other Females of Kin in equal Degree, they are also Parceners: But where a Man hath but one Daughter, she shall not be called Parcener, but Daughter and Heir, &c. *Bract. lib. 2. c. 30. Litt. Sect. 242.*

None are Parceners by the Common Law, but either Females; or the Heirs of Females, which come to Lands or Tenements by Discent: If a Man have Issue two Daughters, and the eldest hath divers Sons and Daughters, and the youngest divers Daughters; the eldest Son of the eldest Daughter

Daughter shall not only inherit, but all the Daughters of the youngest shall inherit also, and such eldest Son is Coparcener with the Daughters of the youngest Sister, and shall have one Moiety of the Lands, *viz.* his Mother's Part; so that Men, descending of Daughters, may be Parceners as well as Women, and shall jointly plead and be impleaded, &c.

And Partition may be made between Parceners in four several Manners: One is when they agree themselves to make Partition; as if there are two Parceners, to divide the Tenements between them into two Parts, each Part by it self in Severalty, and of equal Value; and if there be three Parceners, to divide the Tenements in three Parts, &c. The second Sort of Partition is, to chuse by Agreement certain of their Friends, to make the Partition of the Lands or Tenements in Form aforesaid; and in these Cases after such Partition, the eldest Daughter shall chuse first one of the Parts so divided, which she will have for her Part; then the second Daughter next after her another Part; and then the third Daughter another Part, then the Fourth another, &c. if there are so many Sisters; unless it be otherwise agreed, that one shall have such Tenements, and another such Tenements, &c. without any primer Election. The third Partition is by drawing Lots, where after the Lands are divided, every Part of the Land is written by it self in a little Scroll, and being cover'd or wrapt up in Wax, the Balls of Wax are put in a Hat, to be kept in the Hands of an indifferent Man; and then the eldest Daughter shall draw out one Ball, the second Daughter another, and the Third another Ball, &c. and each of them shall stand to their Chance and Allotment. The fourth Partition is, in case there be four Parceners, and they will
not

not agree to Partition to be made between them, then one may have a Writ of *Partitio facienda* against the other Three; or Two of them may have it against the other Two, or Three against the Fourth, at their Election. *Litt. Sect. 243, 244, &c.*

When Judgment is given upon this Writ, it is that Partition shall be made between the Parties, and that the Sheriff in his proper Person shall go to the Lands and Tenements, and by the Oath of twelve lawful Men shall make Partition; and that one Part of the Lands and Tenements shall be assigned to the Plaintiff, or to one of the Plaintiffs being a Parcener, and another Part to another Parcener, &c. not making any Mention in the Judgment of the eldest Sister, more than of the Youngest: And the Partition so made by the Sheriff and Jurors, shall be return'd into the Court to the Justices, under the Seal of the Sheriff, and the Seals of the said twelve Jurors, by whom the same was made. *Ibid. 248. 1 Inst. 167.*

In a Writ of Partition, there are two Judgments; the first is, *Quod Partitio fiat*, and the other Judgment *Quod Partitio stabilis maneat*, &c. and this last is the principal Judgment: And Partition being made by Force of the King's Writ, and Judgment thereof given, it shall be binding to all Parties, because it is made by the Sheriff, by the Oath of twelve Men, by Authority of Law; and the final Judgment is, that the Partition shall remain firm and stable for ever. *Dyer 67.*

A Tenant by the Curtesy shall have a Writ of Partition, against Parceners with his Wife, upon the Statute of 32 H. 8. By which Statute, Jointenants, and Tenants in Common, that have Inheritance, or Freehold, in any Manors, Lands, Tenements or Hereditaments, shall be compellable

to make Partition, by the Writ *De partitione facienda*; but such Partition shall not be prejudicial to any but the Parties thereto, their Executors and Assigns. A Writ of Partition being brought by Tenant in Fee-simple of one Moiety, against Tenant for Life of the other Moiety, on this Statute; though it has been resolv'd, if Partition be made between one that hath an Estate of Inheritance, and another who hath a particular Estate for Life, that the Writ ought to be framed upon the Statute, and to be made special, setting forth the particular Estate; yet it was held to be good where the Writ was general. *Goldsb. 84. 2 Lutw. 1015. 32 H 8. cap. 32.*

And by the Statute 8 & 9 W. 3. c. 31. After Process return'd upon a Writ of Partition, and Affidavit of Notice given of the Writ to the Tenant to the Action, and a Copy thereof left with the Occupier or Tenant in Possession of the Lands, &c. at least forty Days before the Return of the said Process, &c. if there be no Appearance entered in fifteen Days after the Return; the Demandant having enter'd his Declaration, the Court may proceed to examine his Right and Part, and for so much give Judgment by Default, and award a Writ to make Partition, whereby the Demandant's Part or Purpart will be set out severally; which Writ being executed, after eight Days Notice to the Occupier, and return'd, and thereupon final Judgment entered, the same shall conclude all Persons, &c. But the Court where such Judgment is enter'd, may suspend or set aside the Judgment, if any Party concerned move the Court in a Year, and shew good Matter in Bar.

Also by this Act, if the High Sheriff, by reason of Distance, &c. cannot be present at the Execution of any Judgment in Partition, then the Under-Sheriff,

Sheriff, in the Presence of two Justices of Peace of the County, shall proceed to the Execution of the Writ, by Inquisition in due Form of Law, and the High Sheriff is to make the Return, &c. And when the Partition is made, the Persons who were Tenants of the Lands, or any Part thereof, before divided, shall continue Tenants of the Land they held, to the respective Owners, under such Conditions and Rents as before: And no Plea in Abatement shall be admitted or received in any Suit for Partition; nor shall the same abate by the Death of any Tenant, &c. *Stat. 8 & 9 W. 3.*

All Partitions ought to be according to the Quality and true Value of the Lands, and be equal: But if Partition be made by Parceners of full Age, and unmarried, and of sound Memory, it binds them for ever, altho' the Value be unequal, if it be of Lands in Fee-simple; and in Case it is of Lands intailed, it shall bind the Parties themselves for their Lives, but not their Issues, unless it is equal; for if it is unequal, the Issue of her that hath the lesser Part, may after her Decease disagree, and enter and occupy in common with the Aunr. Likewise if any Parcener be Covert, the Partition shall bind the Husband, but not the Wife or her Heirs; and if any be within Age, it shall not bind the Infant, but she may at her full Age disagree, &c. *1 Inst. 166, 170. 2 Lill. Abr. 283.*

It hath been adjudg'd, that notwithstanding a Partition is unequal, if it is by Writ, it cannot be avoided; but if it be by Deed, it may be avoided by Entry: If the Estate of a Parcener be in Part evicted, that shall defeat or avoid the Partition in the Whole; Partition implying a Warranty and Condition in Law, to enter upon the Whole on Eviction, like to Exchange of Lands. And where after Partition made, one of the Parts is recovered
from

from a Parcener by lawful Title, she may compel the others to make a new Partition between them.

1 *Inst.* 173. 1 *Rep.* 87. *Cro. Eliz.* 902.

Parceners cannot regularly make Partition of an Inheritance, so as for one to have the Land for one Time, and another for another Time to make it a Chattel, &c. for each ought to have her Part absolutely. But if the Partition be, that one shall occupy the Lands from *Easter* until the first of *August* only in Severalty by herself, and that the other shall have and occupy the Land from the first of *August* till the Feast of *Easter* yearly to them and their Heirs, it is a good Partition: And where two Parceners have two Manors by Discent, it may be that the one shall have one of the Manors for one Year, and the other the other Manor for this Year, and so *alternis vicibus*, to them and their Heirs; also where there is an Advowson of a Church descended to the Coparceners, they may present by Turns; and if there be a Common, &c. which may not be divided, one may have it for one Year, and another for another Year, &c. 1 *Inst.* 167. 10 *Rep.* 87.

Where two Messuages descend to two Parceners, one worth 40 s. a Year, and the other but 20 s. the Partition may be made, that the one Parcener shall have one Messuage, and the other Parcener the other; and she who hath that of 40 s. *per Annum*, and her Heirs, shall pay a Rent yearly of 10 s. issuing out of the same Messuage to the other Parcener, and her Heirs for ever, to make up the Equality in Value. If there be a Piscary, or uncertain Profits issuing out of Lands, &c. the eldest Parcener may have them; and the others have Contribution from her out of some other Inheritance left by the Ancestor: But a Partition may not be of Franchises, as Goods of Felons, Waifs, Estrays,

Estrays, &c. which are intirely casual. *Litt. Sect.* 251. 5 *Rep.* 3. *Dyer* 153.

In Judgment of Law Parceners between themselves have several Freeholds, to many Purposes; for one of them may infeof the other of her Part; and the Parcenary in Fee-simple is not severed by the Death of any of them, but if one dies, her Part shall descend to her Issue, &c. Though if one Parcener make a Feoffment in Fee of her Part, to a Stranger, this is a Severance of the Coparcenary: And if there be two Parceners, and each of them taketh Husband, and have Issue, and the Wives die; in this Case there is said to be a Partition in Law. 1 *Inst.* 164, 165, 167.

Partition of Lands held in Tail, by the Death of one Sister without Issue is made void, and the other Sister as Heir in Tail will be intitld to the whole Land; and may have Writ of *Formedon* where the other Parcener hath aliened, &c. And a Writ *Nuper obiit* lies for one Parcener deforced by another, &c. *New Nat. Br.* 476. *F. N. B.* 197. See 3 *Salk.* 208.

Of Estates-tail by Statute, and what particularly relates to them.

AN Estate-tail, is an Estate of Inheritance, limited to a Man and the Heirs of his Body begotten, or to be begotten: And he that giveth the Lands in Tail, is called the Donor, and he to whom the Gift is made, the Donee.

By the Statute of *Westm. 2. 13 Ed. 1.* Estates-tail were introduced; the Inheritance of Lands being divided, and a particular Estate created by that Statute in the Donee, which is what we call Estate-tail, that is, an Estate cut and divided from the Fee-simple; which Estate is to return to the Donor or his Heirs, after the Determination of the Tail: And the Statute *de Donis* creates no Intail, but of such an Estate as was a Fee-simple at the Common Law, and descendible as a Fee-simple. *1 Co. Inst. 19. 3 Nels. Abr. 266.*

If Lands were given to a Man and the Heirs of his Body, before the said Statute of *Westm. 2.* it was interpreted a Fee-simple presently by the Gift, upon Condition that he had Issue; and in that Case, the Condition was supposed to be perform'd for three Purposes, *viz.* to alien and disinherit the Issue, and by the Alienation to bar the Donor or his Heirs of all Possibility of the Reversion; to forfeit the Estate for Treason or Felony; and to charge it with Rent, &c. But by this Statute, the Will and Intention of the Donor is to be observed; as that the Tenant in Tail shall not alien after Issue had or before, or forfeit or charge the Lands longer than for his own Life; and the Estate shall

shall remain to the Issue of the Donee, or to the Donor or his Heirs, where there is no Issue: So that whereas the Donee had a Fee simple Estate before, now he hath but an Estate-tail, and the Donor a Reversion in Fee expectant on that Estate-tail. Though some Mischiefs having crept into the Law by intail'd Inheritances, therefore a Way was found out *anno 12 Edw. 4.* to bar this Estate tail, with Remainders over, by a feigned Recovery; and since by a Fine to bar the Issue, &c. *4 H. 7. cap. 20. 32 H. 8. Wood's Inst. 122.*

Estates-tail of Lands, are either General or Special; the General Tail, is where Lands or Tenements are given to a Man, and the Heirs of his Body begotten: In this Case, it is called a general Tail, because whatsoever Woman such Man taketh to Wife, (if he hath many Wives and by all of them has Issue) every of these Issues may inherit the Lands by Force of the Gift; for that every such Issue is of his Body engendered: And in the same Manner it is, where Lands or Tenements are given to a Woman, and to the Heirs of her Body; altho' she hath divers Husbands, the Issue which she hath by every Husband may inherit one after another, as Heirs of her Body. The Estate held in special Tail, is when Lands and Tenements are given to a Man and his Wife, and to the Heirs of their two Bodies begotten; in which Case, no other Persons shall inherit but the Issue that are begotten by him on that particular Wife; and this is call'd Special Tail, by Reason if such Wife dies, and the Husband marries a second Wife, by whom he hath Issue, they have no Benefit by it, as they have by the general Tail; nor hath the Issue of the second Husband, if the first Husband die. *Litt. Sect. 14, 15. & 16.*

Where Lands are given to the Husband and Wife, and to the Heirs of their Bodies; or if it be to the Husband and his Wife, and the Heirs which the Husband shall beget on the Body of the Wife, in either Case both of them have an Estate in Special Tail; because the Word *Heirs*, is not limited to one more than other. If Lands and Tenements are given to a Man and his Wife, and to the Heirs of the Body of the Man, the Husband hath an Estate in general Tail, and the Wife but an Estate for Life; as the Word *Heirs* relates generally to the Body of the Husband: And if the Estate is made to the Husband and Wife, and to the Heirs of the Body of the Wife by the Husband begotten; there the Wife hath an Estate in special Tail, and the Husband for Term of Life only; because the Word *Heirs* hath Relation to the Body of the Wife, to be begotten by that Husband. If an Estate be limited to a Man's Heirs which he shall beget on his Wife, it creates a special Tail in the Husband; but the Wife hath nothing. *Litt.* 26, 28. 1 *Inst.* 22, 26.

If a Man hath Issue a Son and dieth, and Land is given to the Son, and the Heirs of the Body of his Father begotten, this is a good Estate-tail, and yet the Father was dead at the Time of the Gift. In case Lands are given to a Man and a Woman unmarried, and the Heirs of their two Bodies, they have an Estate-tail in them presently, for the apparent Possibility that they may marry: And though the Lands be given to a married Man and another Man's Wife, and the Heirs of their Bodies, they will have an Estate-tail, in Respect of the Possibility. But if Lands or Tenements are given to two Husbands and their Wives, and the Heirs of their Bodies begotten; they shall take a joint Estate for Life, and have several Inheritan-

ces: So if Lands be given to a Man and two Women and the Heirs of their Bodies; for they cannot have one Issue of their Bodies, and here shall not be any Construction of Possibilities. 1 *Inst.* 26. *Dyer* 326.

There are divers other Estates-tail within the Equity of the Statute, tho' not expressed therein; as if Lands be given to a Man and his Heirs Males or Females, of his Body begotten, the Issue Male or Female only shall inherit according to the Limitation: By Virtue of the Statute, here the Daughter may be Heir by Discent, though there be a Son, for the Will of the Donor shall be observed: But in Case of a Purchase, there cannot be an Heir Female, where there is a Son, who is right Heir at Law. If a Man hath Issue a Son and a Daughter, and dieth, and Lands are given to the Daughter, and to the Heirs Female of the Body of the Father, she taketh but an Estate for Life, because she is not Heir to take by Purchase. *Litt. Sect.* 21, 22. 2 *Inst.* 331.

If Lands are given to a Man, and the Heirs Male of his Body, and he hath Issue two Sons, and then dies, and the eldest Son enters as Heir Male, and hath Issue a Daughter, and dieth; his Brother shall have the Land, and not the Daughter, for that the Brother is Heir Male: But otherwise it is in other Entails. And where Lands are so given to Heirs Males, if the Donee hath Issue a Daughter, who hath Issue a Son, and dieth, and after the Donee dies; in this Case, the Son of the Daughter shall not inherit by Force of the Intail, because whoever inherits on a Gift in Tail made to the Heirs Male, ought to convey his Discent wholly by such Heirs: It is the same, when Lands are given to a Man and his Wife, and to the Heirs Male of their two Bodies begotten, &c. so that here

Cases concerning them. 83

here the Donor may enter, the Donee being dead without Issue Male in the Law: And if Tenant in Tail, general or special, die without Issue generally, the Donor or his Heirs may enter as in their Reversion. *Litt.* 23 & 24.

And so it is *mutatis mutandis*, where a Gift in Tail is made to a Man, and the Heirs Female of his Body, and he hath Issue a Son, who hath Issue a Daughter, this Daughter shall never inherit, because she must convey by Discent from Females. If a Man give Lands to one and his Heirs Male of his Body begotten, Remainder to him and the Heirs Females on his Body begotten, the Donee hath Issue a Son, and he hath Issue a Daughter, who hath Issue a Son, this Son is not inheritable to either of these Estates-tail; because, as *Littleton* saith, the Male must make his Conveyance only by Males, and the Females by Females: But in this Case the Land shall revert to the Donor. And therefore the Lord *Coke* advises it as the safest Way, when a Man will intail his Lands to the Heirs Male and Female of his Body, to limit the first Estate to him and the Heirs Male of his Body, the Remainder to him and to the Heirs of his Body, and then all his Issues whatsoever are inheritable. 1 *Inst.* 25. 11 *H.* 6. 13.

There is a Difference between the Heirs, and his Heirs, in case of Lands given to a Son; for if it be to him and his Heirs of the Body of his Father, the Son cannot take as Heir of the Body of his Father, because the Grant is to him and his Heirs, &c. and consequently he hath a Fee-simple. It is the Word *Body*, makes the Estate-tail, or other Words amounting to it: And a Gift to the Heirs Male, or Heirs Female, without any Thing further, is a Fee simple Estate; by Reason it is not limited of what Body: Though in a Devise or

Last Will, an Estate-tail may be created without the Word *Body*; also begotten shall be supply'd and necessarily intended. The Words *Want of Heirs* of him, have been adjudg'd to be taken for Want of Heirs of his Body: And where a Use was limited to *A. B.* and to his Heirs Male, lawfully to be begotten; these last Words imply, that it must be Heirs Male of his Body, because no other Heir Male can inherit by Virtue of this Grant, but such who is lawfully begotten by the Grantor. 1 *Inst.* 27. 13, 26. *Noy's Max.* 101. 3 *Lev.* 70. 7 *Rep.* 41.

A. devised Lands to *B.* his Son, and if *C.* his Daughter surviv'd *B.* and his Heirs, then she should have the Land; and it was held, that *B.* had but an Estate-tail, for the Word *Heirs* shall be intended Heirs of his Body, for he could not die without collateral Heirs while his Sister was alive: But if the Will had said, that if *W. R.* a Stranger survives *B.* and his Heirs, then he should have the Land; there *B.* would have a Fee-simple, after which there could be no Remainder. A Father having two Sons, devised his Lands to his youngest Son, and if he died without Heirs, then to his eldest Son and his Heirs; here the youngest Son had an Estate-tail, because of the Devise to him; and if he died without Heirs, is the same as if the Testator had devised it in these Words, *viz.* If he die without Heirs of his Body; because otherwise the Remainder limited to the eldest Son had been void, as the youngest Son cannot die without Heirs, so long as the eldest is living. *Cro. Jac.* 415, 416. 1 *Roll. Abr.* 836.

A Case upon a Trial in Ejectment was, A Man who had three Sons, devised his Lands to his second Son after the Death of his Wife, to hold to him and his Heirs for ever; and for Want of such Heirs,

Cases concerning them. 85

Heirs, then to the right Heirs of the Father ; then the Father died, and his second Son enter'd, and died without Issue, living the eldest Son : It was resolv'd, that the second Son had only an Estate-tail, and that the eldest Son shall take by Discent, and not by the Father's Will ; for his Intent was that the Land should descend from himself, not his Son, and the Devise over by these Words for Want of such Heirs, is void in Point of Limitation ; also the Word *Heirs* here can import nothing more than Issue, &c. 1 *Salk.* 233.

And where a Feoffment was made to the Use of the Feoffor for Life, Remainder to his Son and his Heirs ; and for Want of Issue of him, Remainder to the right Heirs of the Feoffor : It was now objected, that tho' this would have been an Estate-tail in the Son by a Will, the Authorities which prove it to be so, do likewise prove that it is otherwise in a Deed. But adjudg'd, that this being but one intire Sentence of Limitation, the Intent whereof is very plain ; therefore the Son hath but an Estate in Tail, tho' it be by Deed, for altho' the first Words of the Sentence, *viz.* to his Son and his Heirs make a Fee-simple, yet the subsequent Words in the same Sentence, *i. e.* and for Want of Issue of him, make an Estate-tail, by qualifying and abridging the first Words. 3 *Salk.* 337. 5 *Mod.* 266.

Though an express Estate for Life be given to the Ancestor, with a Limitation to the Heir or Heirs of his Body, or his Issue ; yet regularly the Ancestor shall take an Estate tail, according to the Rule in Law, that where the Ancestor takes an Estate of Freehold, a Limitation to his right Heir, or Heirs of his Body, are Words of Limitation, and not of Purchase ; but there are some Exceptions to this general Rule. 1 *Rep.* 99. A Father devised Lands

to his Son for Life, and after his Decease, to the Issue of his Body, &c. And for Want of such Issue, Remainder over; as to the Estate that the Son had, two Judges held, he had only an Estate for Life, because such Estate was expressly devised to him: But *Hale* Ch. Just. held, that he had an Estate-tail by Implication; for the Words *Issue of his Body*, and those which follow, *viz.* for Want of such Issue, make an Estate-tail by Implication; tho' Judgment was given according to the Opinion of the other Judges, which was afterwards reversed in the Exchequer-Chamber, by the Opinion of the Chief Justice. 2 *Lev.* 58. 1 *Ventr.* 214, 225. 3 *Silk.* 296.

Estates for Life, and Estates-tail, may be raised by Implication in Wills; but it is said, a Fee-simple Estate shall not arise by Implication in a Will, tho' there is a perpetual Charge imposed by the Devisor on the Devisee, &c. If a Man devises Lands to his Heir, after the Death of his Wife; this is a good Devise to the Wife by Implication; for the Heir is not to have it during her Life, and if the Wife has it nor, none else can, for the Executors cannot intermeddle: Though if a Person devises to a Stranger, after his Wife's Death, this gives the Wife no Estate by Implication; it is but a Demonstration when the Estate of the Stranger shall commence. *Moor* 127. *Bridgm.* 103. 1 *Roll. Abr.* 843. *Bro. Devif.* 52.

A Man devised Part of Lands to his Wife for Life, and that the same and all the Rest of his Lands should remain to his youngest Son, and the Heirs of his Body, after the Death of the Wife; now here was no express Devise of the Rest of the Lands to the Wife, and therefore she ought not to have them by Implication, because the eldest Son and Heir at Law was not excluded, who shall have them

them during the Life of the Wife, 'till the Devise in Tail to the youngest Son takes Effect, for they shall descend to the Heir in the mean Time: Tho' in this Case reported by *Croke*, he says it was adjudged the Wife should have the Whole. *Moor* 123. *Cro. Eliz.* 15.

Where a Person was seised of certain Lands in Fee, he made a Feoffment in Fee to his Use; and after made his Will, by which he devised that the Feoffees should make an Estate of the same Lands to all his Sons, except *Henry*; and if all his Sons died without Issue, Remainder to a Stranger: Here *Hutton* Just. said, That because *Henry* was not excepted in this last Clause, he had an Estate-tail implied. *Hetl.* 57.

In the conveying of Estates, the suffering them to pass by Implication, is a Manner of Transferring not agreeable to the Plainness and Solemnity of the Law: As if *A.* surrendered to the Use of *B.* and *C.* and for Want of Issue of *C.* the Remainder over to *D.* This in a Conveyance at Law, had been but an Estate for Life to *C.* and no Estate-tail by Implication; but as there has been greater Favour and Latitude allowed in the Disposing of Estates by Will, and in the Construction of them, the Judges to support the Intent of the Devisor, where very apparent, have admitted Estates by Implication, tho' to the Disinheritance of the Heir at Law: But where such Estates arise, it must be by a necessary, and not a possible Implication or Intention in the Devisor; for the Heir's Title being plain and obvious, no Words, by Construction, shall impeach it. *Vaugh.* 261, 262, 263.

If *A.* devise Land to *B.* for his natural Life, and after his Decease he gives the same to the Issue of his Body begotten on a second Wife; (he having at the Time of the Devise another Wife) and for

Want of such Issue to *R. L.* and his Heirs for ever; provided that *B.* may make a Jointure of the Premises to his second Wife, which she may enjoy during Life: This is an Estate-tail in *B.* for the Word *Issue* is a collective Name, and takes in the whole Generation. 1 *Vent.* 225.

But where Lands were devised to *A.* and his Wife, and to their Children after their Decease, they having then a Son and a Daughter; it was adjudg'd that *A.* and his Wife had but an Estate for Life, for no greater Estate would have passed at Common Law; and the Intent of the Testator must plainly appear, or they will never admit of a Construction different from what they would allow in Conveyances executed in the Life-time of the Party. And therefore, when a Devise is to *B.* and his Children, or Issue, *B.* having Issue at the Time of the Devise, it must take Effect according to the Rules of the Common Law, and *B.* can have only an Estate for Life jointly with his Children: But if the Testator had devised his Lands to *B.* and his Children, or Issues, and he had none at the Time of the Devise, then he takes an Estate-tail; for it is plain, by the Intent of the Devisor, that the Children shall have the Land, and they cannot take as immediate Devisees, for they were not in Being, nor by Way of Remainder, for the Devise was immediately to *B.* and his Children, and they shall be taken as Words of Limitation, *viz.* as Children of his Body. 6 *Rep.* 17.

A Person devises his Estate to his eldest Son *J. S.* and the Heirs Male of his Body, for the Term of 500 Years; provided if he or any of his Issue Male alien the Premises, then to remain over: This was held an Estate-tail, and the Limitation for 500 Years void; because here the Testator's Intent

was,

was, that it should be an Inheritance, he having taken Care by the Proviso to advance the Issue of J. S. And if it should be only a Term, then by the Discent of the Inheritance on him, the Term would be drowned, and the Issues would be unprovided for, because J. S. might alien the Estate. 10 Rep. 78. Moor 772.

One seised of Lands devised them to his Wife for her Life, if she did not marry; and if she did, then his eldest Son presently after her Decease, to enter and hold the Land to him and the Heirs Male of his Body, the Remainder to his other Sons in Tail Male; with divers Remainders over; the Wife did not marry, yet the Court resolved, that the Lands were intailed by the Will, taking the Intention of the Devisor to be, that the Intail should be created in all Events; but that the eldest Son should not enter 'till after the Decease of the Wife, unless in Case of her Marriage, and then to enter presently, and hold and enjoy the Lands to him and his Heirs Male, &c. 3 Lev. 125.

Though where A. devised all his Land to his Wife, until his Son should be twenty-four Years of Age, and then to his Heirs for ever; and when he came to twenty-four, the Wife should have the third Part for her Life; and if he dies before that Age, then she to have all for her Life; and after her Decease, if the Heir has no Issue, the Remainder to B. the Remainder to the right Heirs of the Devisor: The Heir came to twenty-four, but no Estate-tail was created, by Reason the Fee-simple descended to him; and the Limitation was to take Place, if he died before the Age of Twenty-four, which he did not. Dyer 124. 1 Roll. Abr. 839.

The Father by his Will, devised an Estate to the Son for Life, without Impeachment of Waste, Remainder to Trustees, during his Life, to support
contingent

contingent Remainders, with Remainder to the Heirs of the Body of his said Son, Reversion to himself in Fee, with a Power to the Son to make a Jointure of such a Part, &c. The Question here was, whether the Son took an Estate-tail, or only an Estate for Life, by this Will? And it was decreed in Equity, with the Assistance of the Judges, that he had but an Estate for Life, for by the express Words it had all the Marks attendant on an Estate for Life, being devised without Impeachment of Waste, which would have been needless if it were an Estate-tail: And therefore consequently that the Heirs of his Body should take by Purchase; and tho' the Estate would vest in the first Son, as Tenant in Tail, by Way of Purchase, yet not so as to exclude the other Sons, or their Issue, from taking the like Estate, whenever his Estate determined for Want of Issue; and this it was said had been before resolved. *Abbr. Cas. Eq.* 185, 186. See 3 *Lev.* 431.

And a Man seised in Fee of Land, devised the same to *J. B.* for his Life only, without Impeachment of Waste; and from and after his Decease, then to the Issue Male of his Body lawfully to be begotten, and to the Heirs Male of the Bodies of such Issue lawfully begotten; and for Default of such Issue, Remainder to another and the Heirs Male of his Body; and for Want of such Issue, he limited two Remainders over in the same Words; and it was adjudged, that *J. B.* took only an Estate for Life, because the Estate was given to him during Life, and there was a Limitation afterwards to his Issue, which was a Description of the Person who was to take the Estate-tail. *Ibid.* 184.

Where a Person made a Settlement of his Lands on his Son for Life, Remainder to his first Son, &c. in Tail Male, Reversion in Fee to himself; and

and afterwards he made his Will, and devised as touching his Lands and Tenements, that if his Son's Wife died, during the Life of her Husband, without Issue Male, that then he should have Power to make a Jointure to any other Wife; and for Want of such Issue of his said Son, then the Lands should be and remain to his Son by any other Wife; and in Case of Failure of Issue Male by his said Son, then all his Lands should go to his Grandchildren and their Heirs, share and share alike: And the Court held, that it could not be made an Estate-tail, by Tacking the Estate by the Will to the Estate for Life in the Settlement, on Purpose to support the contingent Remainder; because the Settlement and Will are two distinct Conveyances. 4 Mod. 316.

By a Marriage Settlement and Fine levied, &c. to the Use of Husband and Wife for their joint Lives, Remainder to the Heirs of the Body of the Wife by the Husband to be begotten, Remainder (the Wife surviving the Husband) to her for Life, Remainder to the right Heirs of the Husband: Resolv'd by the Court, that this is an Estate-tail executed in the Wife; it cannot be a contingent Remainder, because that never is but in Cases where the particular Estate may determine before the Contingency happens. And where a Man makes a Feoffment, to the Use of himself for Life, with Remainder to the Heirs Male of his Body, this is a good Estate-tail executed in him; for the Limitation is good by Way of Use; and so it is if he covenant to stand seised in the same Manner: But if a Man seised of Lands in Fee, by Indenture makes a Lease thereof for Life, the Remainder to the Heirs Male of his own Body, this is void, and he hath the Reversion in him; because the Donor cannot make his own right Heir a Purchaser of an Estate

Estate in Tail, without departing with the whole Fee-simple. *Raym.* 127. 3 *Salk.* 338. *Hob.* 30. *Dyer* 156. 1 *Inst.* 22. 1 *Mod.* 159.

If Lands are given to the Husband and the Wife, and to the Heirs of the Body of the Survivor, the Gift will be good, and the Survivor shall have an Estate-tail, but it vesteth not 'till there be a Survivor. And a Man having two Sons, gave Part of his Lands by Will to one of them, and his Heirs, and the Rest to the other and his Heirs; and farther devised, that the Survivor should be Heir to the other, if either died without Issue; by this it was held the Devisees were Tenants in Tail, with Remainder in Fee executed of each other's Part. Also *A.* having Issue five Sons, (his Wife being with Child of a Sixth) devised two Thirds of his Estate to his four younger Sons, and the Child *in ventre sa mere*, if it were a Son, and their Heirs; and if they all die without Issue Male of their Bodies, or any of them, that the Land shall revert to the right Heirs of the Devisor; here the younger Sons were Tenants in Tail in Possession, having cross Remainders over to each other; and no Part shall revert to the Devisor's Heirs, 'till all the younger Sons be dead without Issue Male of their Bodies. 1 *Inst.* 26. *Cro. Jac.* 695. *Dyer* 303. *Hob.* 33.

A Man having Issue three Sons, *A.* *B.* and *C.* by Will devises Lands to *B.* the second Son, and his Heirs for ever, and if *B.* die without Issue living *A.* then *A.* to have those Lands to him and his Heirs for ever; *B.* enters and dies without Issue, in the Life-time of *A.* It was adjudged, that *B.* had a Fee simple by the Devise to him and his Heirs for ever; and that the other Words would not so correct it as to make an Estate-tail, not being if he die without Issue generally, but upon the
the

the Contingency of his Dying without Issue living *A.* So that if he survived *A.* or died in his Lifetime leaving Issue, *A.* was to have nothing; and as this was a Contingency to happen within the Compass of Lives then in Being, tho' the first Devise was after a Fee, yet the Limitation over upon such a Contingency was good, and not within the Danger of a Perpetuity; for the Remainder to *A.* is not a Remainder directly, which cannot be after a Fee, but takes Effect by executory Devise; and upon Determination of the first Estate, by the happening of the Contingency, carries over the Land to the other. *Cro. Jac. 590. 1 Roll. Abr. 611. 2 Leon. 111. Vaugh. 272.*

Where a Person who was possessed of a Term for Years only, devised the Land to his Wife for Part of the Term, and after to his eldest Son for Life, and after to the eldest Issue Male of his said Son for Life; tho' the eldest Son had not any Issue Male at the Time of the Devise, and Death of the Devisor, yet if he had such Issue before his Death, this Issue Male shall have it as an executory Devise; here altho' there be a Contingent upon a Contingent, and the Issue not *in esse* at the Time of the Devise, in as much as it is limited to him but for Life, it is good. But if one possessed of a Term, devises it to his Wife for Life, the Remainder to his first Son for Life; and if he dies without Issue, to his second Son, &c. the Remainder to the second Son is void; because the Remainder of a Term, cannot depend upon a Possibility so remote as the Dying without Issue. *1 Roll. Abr. 612. 1 Lev. 290.*

An executory Devise of Lands, after an Estate-tail generally, tends to a Perpetuity, which is odious in the Law; being when an Estate is designed to be so settled in Tail, &c. that it cannot be

be undone or made void; as where if all the Parties that have Interest join, they cannot bar or pass the Estate. A Term for Years may not be devised in Tail, with Remainders over to raise a Perpetuity: But a Limitation of a Term in Reversion, to several Persons *in esse*, or Being, doth not extend to create any Perpetuity. A Lease for Years, to a Man and the Heirs of his Body, &c. is not good; but it may be assigned to Trustees, for the Issue in Tail to receive the Profits, &c. which is in Effect an Estate-tail; though if such Lease comes then to be expressly limited in Tail, a present Remainder may not be limited thereon: But the Law will allow a future contingent Estate, so as it wears out in a short Time, as in the Compass of two Lives, &c. 2 *Lill. Abr.* 292. *Moor* 495. 10 *Rep.* 47. 4 *Inst.* 27. *Chan. Rep.* 8.

A Tenant in Tail cannot be restrained from suffering a Common *Recovery* of his Estate: If there be Tenant for Life, Remainder in Tail, with Remainder or Reversion in Fee; and Tenant for Life is impleaded by Agreement, who vouches Tenant in Tail, and he vouches over the common Vouchee; this shall bar the Remainder and Reversion in Fee, tho' he in Remainder or Reversion did never assent to the Recovery: And so if Tenant for Life surrender to him in Remainder in Tail, he may bind the Remainder and Reversion expectant upon his Estate. Though if Tenant for Life alone suffer a Recovery, without the Assent of him in Remainder, the Recovery will be void: And in Case a Recovery be had against Tenant for Life, and a Remainder-man in Tail, not being vouch'd by the Tenant for Life, and they vouch the common Vouchee; the Recovery thus suffered doth not Bar the Intail, nor the Remainder over,
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neither are the Issue in Tail barred by it. 1 Rep. 15. 3 Rep. 60. 1 Inst. 362. Cro. Eliz. 670.

If Tenant for Life suffers a Common Recovery by Consent and Covin, between such Tenant and the Recoveror; this is a Forfeiture of his Estate, and he in Reversion may enter presently: And all Recoveries had and suffered by Agreement of the Parties by Covin, against Tenants in Tail after Possibility of Issue extinct, Tenants by the Curtesy, or for Term of Life or Lives, &c. shall be void against them in Remainder or Reversion, and their Heirs, by the Stat. 14 Eliz. cap. 8. But this Statute extendeth not to any Recovery, except it be by Agreement and Covin; and it was never the Intent of the Act to extend to such a Recovery, in which a Tenant in Tail was vouched. 1 Rep. 15. Wood's Inst. 251.

If there be Tenant in Tail, Remainder in Tail, and Tenant in Tail makes a Feoffment to the Reversioner in Fee; it is a *Discontinuance*, for which the Issue of such Tenant in Tail after his Death, and he in Remainder in Tail may have an Action, but cannot enter upon the Land: And Tenants in Tail can grant no greater Estate than during their own Lives; unless it be by Lease, &c. according to the Statute 32 H. 8. By which Act they are enabled to make *Leases* not exceeding three Lives, or twenty-one Years from the Making; but if there be an old Lease in Being, it must be surrendered; and such Leases must be of Lands or Tenements which have been commonly let to farm for the Space of twenty Years; the accustomed yearly Rent, or more is to be reserved; they are not to be made without Impeachment of Waste; and are to have all due Ceremonies. 32 H. 8. cap. 28. 1 Rep. 140.

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And a Husband may make Leases of Lands in Tail, held in Right of his Wife; so as in such Leases the Conditions aforesaid are observed, and the Wife be made a Party to and seal the Leases; and the Rent is to be reserved to the Husband and Wife, and her Heirs, &c. If Tenant in Tail make a Lease generally, it shall be construed for his own Life only: And the Leases according to the Statute, tho' they bind the Issues in Tail; they do not those in Reversion or Remainder. For if a Tenant in Tail makes a Lease warranted by the Statute, and dies without Issue, the Lease as to him in Remainder or Reversion is void; but by a Common Recovery, Leases may be made to bind him in Remainder, &c. 1 *Inst.* 42, 362.

Also Bishops, Spiritual Persons, &c. seised in Fee, in Right of their Churches, may make Leases of their Spiritual Livings for three Lives, or one and twenty Years, having all the Qualities required by the Statute, in Case of Leases made by Tenants in Tail: And such Leases may be made according to the Statute, without Confirmation of Dean and Chapter; by which concurrent Leases for twenty-one Years, &c. upon Leases for Years, will be good; but not for Life or Lives. 3 *Rep.* 59. *Wood* 273.

As by Statute it is incident to Estates-tail, to make Leases; so by Custom, it is to grant Lands by Copy of Court-Roll, &c. And there are divers Incidents to an Estate held in Tail, *viz.* to be punishable of Waste; that the Wife of the Donee shall be endowed out of the Land; and the Husband of a Feme Donee, be Tenant by the Curtesy; and that the Tenant in Tail may suffer a Common Recovery, &c. And these are all so incident to the Estate in Tail, that a Condition to restrain any of them, will be void. 1 *Inst.* 224. 10 *Rep.* 38.

Estates-tail are usually made upon *Settlements*; tho' an Agreement to intail, is no Intail; for no such Agreement shall bind the Issue in Tail, where there is a first Intail, without a Fine. Not only Lands, but Rents, Profits, Uses, Offices, Dignities, &c. which concern Lands, or certain Places, may be intailed: But where the Grant of an Inheritance is merely Personal, or exercised with Chattels, and not issuing out of Land, no Intail may be made. And a general Tail, and a special Estate-tail, may not be at one and the same Time; if they are, the General, which is greater, will frustrate the Special. *Chan. Rep.* 236. 4 *Inst.* 87. 1 *Inst.* 28.

An Estate-tail it is said cannot merge, by the Accession of the Fee-simple to it: Tho' it has been adjudg'd, in a particular Case, that two Fees immediately expectant upon one another, (as where a Man is Tenant in Tail, and Remainder in Fee to the Tenant in Tail) cannot subsist in the same Person; and the Statute of *Westm.* having made Estates-tail a Kind of particular Estates, they must like all other such Estates be subject to Merger and Extinguishment, when united with the absolute Fee. 8 *Rep.* 74. 1 *Salk.* 338.

The *Estate-tail after Possibility of Issue extinct*, is where Lands and Tenements are given to a Man and his Wife in special Tail, and either of them dies without Issue had between them; the Survivor hath an Estate-tail after Possibility of Issue, &c. and if they have Issue, and the Issue dies without Issue, so as there be not any Issue left which may inherit by Force of the Intail, the Survivor of the Donees hath an Estate in Tail after Possibility of Issue extinct. *Litt. Sect.* 32.

As an Estate-tail was originally carved out of a Fee-simple, so is this Estate out of an Estate in special

cial Tail: And the Estate of this Tenant must be created by the Act of God, *viz.* by the Death of either Party without Issue; none can have this Estate but one of the Donees, or a Donee in special Tail; for the Donee in general Tail cannot be Tenant in Tail after Possibility of Issue, because always during his Life, he may by Possibility have Issue that may inherit by Force of the Intail: And in the same Manner, the Issue which is Heir to the Donees in special Tail, cannot be Tenant in Tail after Possibility. 1 *Inst.* 28. *Litt. Sect.* 34.

If Lands be given to a Man and his Wife, and to the Heirs of their two Bodies, which is an Estate in special Tail, and after they are divorced for any Cause, their Estate of Inheritance is then turned to a joint Estate for Life; and altho' they had once such an Estate of Inheritance in them, for that the Estate is alter'd by their own Act, and not on the dying of one of them without Issue, they are not Tenants in Tail after Possibility of Issue extinct. Where one gives Land to Husband and Wife, and the Heirs of the Body of the Husband, with Remainder to the Husband and Wife and the Heirs of their two Bodies begotten; if the Husband die without Issue, the Wife shall not have an Estate-tail after Possibility: For here the Remainder in special Tail was utterly void, because so long as the Husband should have Issue, they should inherit by Force of the general Tail; and in case the Husband dies without any Issue, then the special Estate-tail cannot take Effect, by reason the Issues which should inherit it must be begotten by the Husband. 1 *Inst.* 28. 9 *Rep.* 139. 10 *Rep.*

The Estate of Tenant in Tail after Possibility of Issue, must be on there being no Possibility that he can have any Issue inheritable to the same Estate-tail. But if a Man gives Lands to a Person and his Wife,

Wife, and the Heirs of their two Bodies, and they live till each of them be one Hundred Years old, and have no Issue; yet doth the Law see no Impossibility of having Children, and they continue Tenants in Tail: Tho' when a Man and his Wife are Tenants in special Tail, and the Wife dies without Issue, there the Law seeth an apparent Impossibility, that any Issue which the Husband can have by any other Wife should inherit this Estate. And this Tenant in Tail after Possibility of Issue, ought to keep his Estate, to have the Privileges belonging thereto; for by Grant and Assignment of it over to another, the Privy of the Estate is altered, and therefore the Privileges are gone. 1 *Inst.* 28. 11 *Rep.* 80.

If a Feoffment in Fee be made to the Use of a Man and his Wife for their Lives, and after to their next Issue Male to be begotten in Tail, Remainder to the Use of the Husband and Wife, and of the Heirs of their Bodies begotten, they having no Issue Male at that Time; in this Case the Husband and Wife are Tenants in special Tail till they have Issue a Son, and then they become Tenants for Life, the Remainder to the Son in Tail, with Remainder to them in special Tail: But tho' their Estate becomes a bare Estate for Life, if the Issue dies, and the Husband dies having no other Issue, and the Son dies without Issue, the Wife shall have the Privilege of Tenant in Tail after Possibility of Issue extinct. 11 *Rep.* 80. 3 *Cro.* 316.

And Tenant in Tail after Possibility, has a greater Privilege in respect of the Quality of his Estate, than Tenant for Life; for it favours much of an Estate-tail, out of which it is derived, and therefore he shall not be punished for Waste, &c. But as to the Quantity of his Estate, he has but an Estate for Life; so that if he makes a Feoffment of

100 Of Remainders, Reversions,

it, it is a Forfeiture of his Estate, and he in Reversion may enter when he aliens in Fee. 11 Rep. 80.

Altho' a Person cannot claim the Estate of Tenant in Tail after Possibility, yet he may claim the Privilege and Benefit of it; and the Quality remains, tho' the Estate is changed by the Death of one Donee without Issue, because it was once an Inheritance, &c. *Ibid.*

Of Remainders, and Reversions in Fee, &c. and Warranties.

A Remainder is an Estate limited in Lands or Tenements, to be enjoyed after the Estate of another is expired therein; as if one grant Land for Term of Years, or Life, and afterwards the Lands to remain to another Person and his Heirs. *Brañ. lib. 2.*

'Tis likewise said to be the Residue or Remnant of an Estate in Land, depending upon a particular Estate, and created together with the same; and if a Man seised of Lands in Fee, lets or grants the Lands for Years, the Remainder over to another for Life in Tail, or in Fee; here is first a particular Estate for Years, created out of a Fee, and afterwards the Residue disposed of, which is called a Remainder; tho' the particular Estate, and all the Remainders, make but one Estate in Law. 1 *Inst.* 49. *Plowd.* 25.

The Estates in Remainder and Reversion are Estates in Expectancy only; they are a present Interest, yet stand in a Degree removed from the Possession till the particular Estate is determined:
And

and Warranties of Lands. 101

And as by a Reversion, after the appointed Term, the Estate returns to the Donor or his Heirs; so by a Remainder it goes to some third Person or a Stranger. A Person that takes by way of Remainder, contrary to other Estates, need not be a Party to the Deed creating it: And the following Rules are to be observed in the Creation of Remainders. There must be a particular Estate precedent made at the same Time for the Remainder to depend upon; and the particular Estate is to continue till the Remainder vests; the Remainder must commence in Possession at the very Time the particular Estate ends, and pass out of the Lessor executed or executory at the Time of the Possession taken by the particular Tenant; also it may depend upon a Condition that is not repugnant or against Law; the Person to whom the Remainder is limited, is to be capable of it at the Time it was created, or by common Possibility during the particular Estate; and the Thing whereof such Remainder shall be made, must be *in esse* before and at the Time of the Appointment and Creation thereof. 1 Rep. 66, 129. 2 Rep. 51. 3 Rep. 20. 1 Inst. 378. Wood's Inst. 152.

But there may be a Remainder in some Cases without a particular Estate to support it; as in the Case of an Use in Remainder, by the Statute of Uses: And if the Remainders are limited by a Devise, they are good without any particular Estate; tho' not where the Estate passes by Livery and Seisin. A Remainder must be created with the particular Estate in a Deed or Grant, and be limited for a certain Estate: A Person levied a Fine to the Use of himself for Life, and afterwards to the Use of his two Daughters, till his Son return'd from beyond Sea, or came of Age, or died, which should first happen; and then Remainder to his

102 Of Remainders, Reversions,

Son, &c. This was a good Remainder, and did not depend on any Uncertainty, because tho' his returning or coming of Age was uncertain, yet his Death was certain. If a Man make a Lease for Life, with Remainder to his Heirs, or Remainder to himself and his Heirs, &c. the Remainder is void, and his Estate is not altered: But 'tis otherwise if he convey the Land by way of Use, with such Limitation. 2 *Lill. Abr.* 443. *Dyer* 126. *Cro. Eliz.* 269. 1 *Ventr.* 378.

A Man conveys Lands to the Use of himself for Ninety-nine Years, if he live so long; Remainder to his first, second or third Son, &c. this Remainder is not good, for want of a Freehold to support the same; a Freehold being necessary to support every contingent Remainder, and it is against the Rules of Law that such a Remainder in Fee can be supported by a Term for Years, or by any Thing less than a Freehold. But a Man may make a Lease for Years to one, so long as he shall live of those Years; Remainder to another for the Rest of the Years, &c. 2 *Lill.* 446. *Moor* 486. 4 *Mod.* 54. 1 *Rep.* 153.

Remainders are absolute or contingent; a contingent Remainder is where the Estate is limited to take Place *in futuro* upon an uncertain Event, where a particular Estate which doth support a Remainder, may or may not determine before the Remainder may commence. These contingent Remainders are preserved by making a Feoffment to the Use of *A. B.* for Life, Remainder to the Use of the Feoffees for the Life of *A. B.* &c. and so on limiting contingent Remainders; when he that hath the first Estate cannot destroy the Remainders so limited. But in a common Case, a contingent Remainder may be destroy'd by levying a Fine, suffering a Recover, or otherwise destroying the
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the particular Estate upon which the contingent Estate depends before the Contingency happens: And where the particular Estate is drowned in the Reversion, or by any Means gone, the Contingent Remainder which depended upon it is gone. 10 Rep. 85. 1 Inst. 378. 1 Ventr. 189. 2 Saund. 382.

Where by Will a Contingency is limited to depend upon an Estate of Freehold, which is capable to support a Remainder, there it shall never be construed to be an executory Devise, but a contingent Remainder only. And when a particular Estate is limited, and the Inheritance passes out of the Donor, this is a contingent Remainder, and in Abeyance; but if the Fee is vested in any Person, and to be vested in another upon a Contingent, it is an executory Devise, and the Estate descends till the Contingency doth happen. Neither a Fine, nor Recovery, nor any Thing else, can destroy such executory Devise; for that bars only where there is a Privy in Law, as he in Remainder or Reversion; and this is not a Remainder, but an independent Thing from it. 3 Saund. 388. Cro. Jac. 590. Carter 53.

He in Remainder of an Estate vested, may grant or devise the same; and a Lease made by him in Remainder during the Life of Tenant for Life, is a good Lease. A Man seised of a Remainder, may convey it away by Deed of Bargain and Sale, &c. And where there is Tenant in Tail, Remainder in Tail, Remainder in Fee; if the Remainder-Man in Tail levies a Fine in the Life of the first Tenant in Tail, and by Deed declares the Uses thereof; this shall bar himself and all his Issue claiming under him: And a Grant of the Remainder in Fee, will be good. Also a Recovery suffered by Tenant in Tail, where there is a good

104 Of Remainders, Reversions,

Tenant to the *Præcipe*, will bar all Remainders whatsoever. *Cro. Eliz.* 178. 2 *Rep.* 51, 53.

It is regularly true, that when the precedent particular Estate is defeated, the Remainder shall be also thereby defeated; that is, when the particular Estate and the Remainder depend upon one Title, there the defeating of the particular Estate is a defeating of the Remainder. But where such particular Estate is defeasible, and the Remainder by good Title; there, tho' the particular Estate is defeated, the Remainder is good: As if a Lessor disseise the Lessee for Life, and make a Lease to another for the Life of the Lessee, the Remainder to a third Person in Fee; here altho' the Lessee doth re enter, and defeat the Estate for Life, yet the Remainder being once vested by good Title shall not be avoided. So it is if a Lease be made to an Infant for Life, the Remainder in Fee, and the Infant at his full Age disagrees to the Estate for Life, yet the Remainder is good, as it was once vested by Title; for in both these Cases there was a particular Estate at the Time of the Remainder created. 1 *Inst.* 298. 1 *Rep.* 135. 6 *Rep.* 28. *Plowd.* 114, 344.

A. makes a Feoffment in Fee to the Use of himself for Life, and after to the Use of *B.* for his Life, Remainder to the Use of *C.* for Life, and Remainder to the Use of *D.* in Fee: *A.* dies, and *B.* refuses to accept; *C.* shall take his Remainder presently upon the Refusal of *B.* for the Feoffor hath by his Feoffment given all the Estate out of himself, and all the Uses are created out of it; and therefore so long as the Uses can take any Effect, the Feoffor shall not have any Thing to do with the Land. But in Case of a Covenant raising Uses to a Man's Sons for Life, &c. the Consideration which is the Cause that raises every several Use is
several

and Warranties of Lands. 105

several ; and all the Uses arise and grow out of the Estate of the Covenantor : Therefore if one refuseth, he who is next in Remainder shall not take the Land presently, but the Covenantor may retain it until the next Use comes *in esse*, which is after the Death of *B.* In these Cases the Covenantor continues in Possession, which remains in him until a lawful Use in Remainder ariseth, and which shall not arise before its Time for any Defect in the Use precedent. 1 *Rep.* 154. 1 *Leon.* 197, 200. 1 *Ventr.* 374. 1 *Mod.* 159.

A Testator seised of Lands, devised them to *H.* his Nephew, eldest Son of his Brother, for Life, Remainder to his first Son in Tail, Remainder to *R.* the second Son of his said Brother, with several Remainders over : *H.* entered by Virtue of this Devise, and died before his first Son was born, leaving his Wife with Child of a Son ; and *R.* entered as in Remainder, and about six Months afterwards the Son of *H.* was born : And adjudged, that this being a contingent Remainder to that Son, who was not born when his Father who had the particular Estate for Life died, it was therefore void ; and *R.* being the next in Remainder, and entering before the Son of *H.* was born, it was vested in him by Purchase ; this Judgment was affirmed upon a Writ of Error in *B. R.* but it was reversed in the House of Lords ; for it being a Case arising upon a Will, it shall be construed according to Equity, and agreeable to the Intention of the Party, which could never be to disinherit the Heir of his Family upon such a Nicety in the Law. 4 *Mod.* 282. 1 *Salk.* 227, 228.

And because such Cases might often happen, it was enacted by Statute ; That where any Estate shall by any Marriage, or other Settlement, be limited in Remainder, to or to the Use of the first,

106 Of Remainders, Reversions,

or other Son or Sons of the Body of any Person lawfully begotten, with any Remainder or Remainders over to the Use of any other Persons; or in Remainder, to or to the Use of a Daughter or Daughters lawfully begotten, with any Remainders over; any Sons or Daughters of such Persons lawfully begotten, or to be begotten, that shall be born after their Father's Decease, may by Virtue of such Settlement, take such Estate so limited to the first and other Sons, or to the Daughters, in the same Manner as if born in the Lifetime of their Father; and altho' there shall be no Estate limited to Trustees after the Decease of the Father, to preserve the contingent Remainders to such after-born Children, until they come *in esse*, or are born to take the same. *Stat. 10 & 11 W. 3. cap. 16.*

But it has been made a Question by some Lawyers, whether this Act to enable *Posthumous* Children to take Estates by way of Remainder, as if born in their Father's Life-time, extends to a Devise? By Reason the Words of the Statute are, where an Estate is by any Marriage or other Settlement limited in Remainder, &c. 1 *Salk.* 228.

If a Person be Tenant for Life, Remainder to his first, second and third Son, the like Remainder to others and their Sons, &c. one of which hath Issue a Son, and then he and the others join in a Fine to Tenant for Life, who after makes a Feoffment of the Land; as here there is a Son of one of the Remainder-Men born, who has a Right of Entry left in him, this will support the Remainders: 'Tis otherwise if Feoffees, who have only an Estate during the Life of a Son, &c. where divers Remainders are limited over, make a Feoffment in Fee to him; because the Estate for Life, on which
the

the Remainders are supported, is forfeited by it.
1 *Mod.* 92. 2 *Saund.* 282. 1 *Rep.* 120.

There was Tenant for Life, with Remainder to his Wife for Life, Remainder to his first and second Son, &c. in Tail, Remainder to the right Heirs of Tenant for Life; who afterwards committed Treason, and then his Son was born, and the Father was attainted: It was adjudged, that whether the Son was born before or after the Attainder, the contingent Remainder to him was not discharged by the vesting of the Estate in the Crown, during the Life of the Father, because of the intermediate Estate to the Wife for Life, which supported that Remainder. 2 *Salk.* 576.

If a Person hath a Son nine Years old, and makes a Lease till his Son come of full Age; and after that, that it shall remain to another in Fee: If he live to his Age, it will be a good Remainder; and otherwise not. A Lease is made of Lands to B. for Years, Remainder in Tail to C. and Remainder to the right Heirs of B. In this Case B. hath nothing in the Fee: It is a contingent Remainder in the Heir of B. and if C. dies without Issue in B.'s Life-time, the Remainder will be void; for B. during his Life cannot have an Heir. But where a Devise is to a Man for Life, Remainder to the Heirs of his Body now living; this is a sufficient Designation of the Person, and shall be taken to be a Remainder vested, and not a contingent Remainder. 3 *Rep.* 20. *Jenk. Cent.* 248. 2 *Vent.* 313.

A Man makes a Conveyance to the Use of himself for Life, Remainder to his eldest Child; he hath Issue a Daughter, and afterwards a Son; as soon as the Daughter is born, the Remainder is vested in her, and shall not be divested by the Birth of the Son. In a Limitation of a Remainder, the Word *Puer* may be construed either a Son of
Daughter;

108 Of Remainders, Reversions,

Daughter; but in a Family Settlement, it shall be intended to be a Son, where the Sons are always preferred: And where a Tenant in Tail suffered a Recovery to Uses, with Remainder to the eldest Son of his Body in Tail, &c. and after the same Person and his Wife levied a Fine to Uses, Remainder to the eldest Child of the Husband, and Remainder over; after which the Husband had Issue a Daughter, and a Son after that, and then the Father died; adjudged that the Son shall have the Land, and not the Daughter, because of the first Limitation. 2 *Leon.* 219. *Dyer* 337.

There are cross Remainders in Wills and Deeds; as where the Testator deviseth an Estate to two Children or other Persons, and that each shall be the other's Heir, &c. But such cross Remainders are seldom or never allowed by Implication: And though they are permitted between two Persons, they are rarely amongst three or more; unless it plainly appears by the Will, that the Testator so intended, when they may be allowed. 2 *Roll. Rep.* 281. 1 *Ventr.* 224.

In Deeds, by limiting Remainders, the Reversion may pass; and by the Name of a Reversion, sometimes a Remainder passeth: A Lease being made for Life, afterwards the Lessor demised the Remainder to another; to hold the said Remainder, after the Determination of the first Lease, for twenty Years; and it was held that the Reversion did pass by the Name of the Remainder: And if a Man grant Lands to another Person, and to the Heirs of his Body; and for Want of such Issue, that the Lands shall revert to the Grantor; by these Words the Remainder doth pass. *Dyer* 46. 3 *Nels. Abr.* 20.

A Feoffment was made in Fee by a Man to the Use of himself for Life, Remainder over to the Use

and Warranties of Lands. 109

Use of *A. B.* for Life, Remainder to the right Heirs of the Feoffor; it was here resolved, that the Fee-simple was in the Feoffor in the Nature of a Reversion, not of a Remainder to his Heirs, as it proceeded from himself, and was his own Act. And where a Lessor by Deed, reciting that *A. B.* held a Close of him at Will, granted the said Close to him for Life, rendring Rent to the Lessor, and by the same Deed granted the Reversion to another in Fee; in this Case 'twas adjudged, that *A. B.* had an Estate for Life by Way of Confirmation, and that the other had a good Estate in Remainder, but not in Reversion: Though an Estate at Will is not such a particular Estate in it self, whereon a Remainder may depend. 1 *And.* 256. 23. *Wood's Inst.* 150.

In Case of a Feoffment to the Use of Husband and Wife during their Lives, with Remainder to the first Son in Tail, and Remainder to the Husband and Wife, and to the Heirs of their two Bodies, they having then no Son: Here the Husband and Wife are Tenants in Tail; but when a Son is born, then the Estate is opened again, and they are Tenants for Life, Remainder to the Son in Tail, Remainder to them in Tail; and the Reason is, because all these Estates were created by one and the same Conveyance; wherefore the Remainder shall vest in the Husband and Wife till the Contingency happens, when the Estates shall be open and disjoin'd, to let in the contingent Remainder to the Son, which before were united in the Husband and Wife: But where the Remainder *in esse* comes to the particular Estate by any Means whatsoever, after the original Conveyance, it is otherwise. 1 *Inst.* 28. 2 *Saund.* 385.

A Remainder may not be limited after a Fee-simple Estate: Tenant in Tail cannot limit a Remainder

110 Of Remainders, Reversions,

mainder over by Deed; for an Estate for his own Life is as long as he can grant: A Proviso in a Deed, will not make a Remainder; but it may determine it: *A. leased to B. for Life, Remainder to C. Provided that if A. had a Son who should live to such an Age, then the Estate to remain to his Son in Tail; he had such a Son, and it was adjudg'd that he should not have the Estate.* A Remainder limited after an Estate which is void, is also void; and when a Limitation is impossible and void, all the Remainders after are void. *Plowd. 29. 2 Rep. 52. Cro. Eliz. 360. 1 Saund. 150. 2 Lev. 157.*

One can in no Case divest a Remainder or Reversion, without defeating the particular Estate; and the Divesting or Revesting of the particular Estate, divests or reverts the Remainder, &c. An Entry is requisite to avoid a Remainder for Life; and a Claim of a Remainder by Force of a Condition, must be upon the Land: A Bargain and Sale made off from the Land, is not sufficient to make a Claim, and then to pass a Remainder. And where any Remainder depends upon a Lease for Life or Years, Livery is to be made on the Lease, or the Remainder will not pass. *1 Inst. 422. 2 Rep. 53, 54. 1 Inst. 143.*

The most proper Word to create an Estate in Remainder, is the Word *Remainder* it self; tho' it may be made and created by other Words. And the Tenant for Life and Remainder-man in Fee, having but one Estate; therefore the Execution of the one, is that of the other: And hence it is, that which is done by, or to one of them, in many Cases shall bind and advantage the other; as in Case of a Release, &c. All Lands, Houses, Rents, Commons, Estovers, or any other Interest or Profit *in esse*, wherein the Grantor hath the absolute
 2 Property

and Warranties of Lands. 111

Property to him and his Heirs for ever, may be granted in Succession to one for Life, with Remainders over, &c. *Plowd.* 134, 159. *1 Cro.* 504. *9 Rep.* 48.

But where a Man seised of Lands in Fee, granted thereout a Rent-charge to a Person for Life or Years, Remainder over to another, in Fee, or in Tail, &c. it was formerly doubted if this Remainder were good; because the Rent had no Existence at all before the Grant, and the Grantor cannot be said to have any Part of the Rent left in him, as he would have of Land; for he first gave Being to the Rent, and bounded it's Time, which being run out, nothing thereof remains to grant over to another, and a Remainder is to be granted out of that which would otherwise be a Reversion in the Grantor; which here this Rent cannot be as it is newly created. Though such Remainders of a Rent have been held good; for as the Grantor might at first have granted it in Fee, or for ever, having such perpetual Interest in the Fund or Lands, out of which it was to arise; so he may share and divide his Grant, and give Part thereof to one, and Part to another, in Succession: Yet if he grant such Rent for Life, or Years, to one, without going further; he cannot after grant the Reversion thereof to another, because he has no Reversion in him. *2 Roll. Abr.* 415. *2 Cro.* 70, 76. *1 Lev.* 144. *1 Sid.* 285.

A Writ of Attaint lies for him in Reversion or Remainder upon a false Verdict, or erroneous Judgment given against the particular Tenant. Action lieth for him in Remainder, against a Copyholder for Life, committing Waste, &c. A Person in Remainder may have a Writ of Intrusion, if any do intrude after the Death of Tenant for Life: And the Writ *Ex gravi Querela* may be had

112 Of Remainders, Reversions,

had to execute a Devise in Remainder, after the Death of Tenant in Tail, without Issue. But notwithstanding, a Remainder or Reversion, expectant upon an Estate-tail, is no Assets to the Heir in Debt upon his Father's Bond; nor is it of any Account in Law, because it may be cut off by Fine and Recovery: 'Tis otherwise of a Reversion on an Estate for Life or Years. 3 *Lev.* 130. *Nat. Br.* 441, 453. 1 *Inst.* 173. 6 *Rep.* 42.

A Recovery had against Tenant in Tail of the King's Gift, the Reversion or Remainder being in the King, shall not be a Bar; nor shall such Remainder or Reversion be barred thereby: But by the Statute 34 *H.* 8. The Estate-tail is not preserved, where a Reversion or Remainder is in the King, except it was created by the Crown, and not where it was made by a common Person. *Dyer* 32. 2 *Rep.* 15.

If any Persons, for whose Lives Estates have been granted, remain beyond Sea, or absent themselves in this Realm, seven Years together, and no Proof is made of their being alive, in any Action commenced by the Lessors or Reversioners, for Recovery of such Estates, they shall be accounted as dead: But if the Person be afterwards proved living, at the Time of Eviction of any Person, &c. then the Tenant, &c. may re enter, and recover the Profits, &c. *Stat.* 19 *Car.* 2. *cap.* 6.

And Persons in Remainder, Reversion or Expectancy of any Estate, after the Death of any other Person, upon making Affidavit in Chancery, of their Title thereto, and that they have Cause to believe such other Person is dead, and his Death concealed by a Guardian, Trustee, or others, may move the Lord Chancellor once a Year, if they think fit, to order such Guardian, &c. to produce the Person; and if not produced in Chancery or
before

and Warranties of Lands. 113

before Commissioners, the Person so concealed shall be taken to be dead, and those claiming may enter on the Estate. 6 *Ann. cap.* 18.

See more of Contingent Remainders, and Cross Remainders, under *Estates-tail*.

As to the Estate in Reversion of Lands and Tenements,

A Reversion hath a double Acceptation in Law; the one is where an Estate is left, which continues during some particular Estate in Being; and the other is the Reverting or Returning of the Land, after the particular Estate ended: It is said to be an Interest in the Land, when the Possession shall fall, and so it is commonly taken; or it is where the Possession and Estate which was parted with for a Time, ceaseth and is determined in the Persons of the Alienees or Grantees, &c. and returns to the Grantor or Donor, or their Heirs from whence such Estate was derived. *Plowd.* 160. 1 *Inst.* 142.

But the usual Definition of a Reversion is, that it is the Residue of an Estate left in the Grantor after a particular Estate granted away, continuing in him that granted the particular Estate; and where the particular Estate is derived out of his Estate: As in a Gift in Tail, the Reversion of the Fee-simple is in the Donor; and in a Lease for Life, or Years, the Reversion is in the Lessor: Also a Reversion takes Place after a Remainder, where a Person disposes of a less Estate, than that whereof he was seised at the Time of Disposition thereof; and such Reversion is said to be expectant on the particular Estate. 1 *Inst.* 22. *Wood's Inst.* 151.

114 Of Remainders, Reversions,

The Difference between a Reversion and a Remainder, is that a Remainder is general, and may be to any Man, but he that granteth the Land, for Term of Life or otherwise; and a Reversion is to himself from whom the Conveyance of the Land proceeded, and commonly perpetual, &c. And Remainder is an Estate, appointed over at the same Time: But the Reversion is not so, being an Estate left in the Giver, after the particular Estate for Life, Years, or in Tail made by him. *Noy 39.*

A Reversion is an actual present Interest, altho' it is to take Effect in Possession after another Estate, and the Rent shall go with it; and it is not in the Nature of a future Interest, as a Term for Years, limited to commence at the End of a former Term. When the particular Estate determines, then the Reversion comes into Possession, and before it is separated from it; for he that hath the Possession, cannot have the Reversion, because by uniting them, the one is drown'd in the other: But the Reversion of Land when it falls, is the Land it self; and the Possession of the Tenant, preserves the Reversion of the Lands, with the Rents, &c. in the Donor, or Lessor. *2 Ventr. 328. 2 Lill. Abr. 484. 1 Inst. 324.*

If a Man seised of Lands makes a Feoffment to Uses in Fee, departing with all his Estate, and limits the Use to his Daughter for Life, and after her Decease to his Son in Tail, and after to the Use of the right Heirs of the Feoffor: In this Case, tho' he parted with the whole Fee-simple by the Feoffment, and limited no Use to himself, yet he hath a Reversion; for whenever the Ancestor takes an Estate for Life, and after a Limitation is to his right Heirs, such Heirs shall not be Purchasers: And here when the Limitation is to his right Heirs, and right Heir he cannot have during his
Life

and Warranties of Lands. 115

Life by our Law, the Law doth create a Use in him during his Life, 'till the future Use comes *in esse*, and consequently the right Heirs cannot be Purchasers; and there is no Difference when the Law createth an Estate for Life, and when the Party doth it. 1 *Inst.* 22. *Dyer* 9. 134. *Plowd.* 516.

All this was adjudged in a Case in the King's Bench; and if the Limitation had been to the Use of himself for Life, and after to the Use of another in Tail, and after to the Use of his own right Heirs; the Reversion of the Fee would have been in him, because the Use of the Fee continued ever in him; and the Statute of 27 *H.* 8. doth execute the Possession to the Use in the same Manner, Quality and Degree as the Use was limited. *Ibid.*

Where Lessee for Life, and he in Reversion or Remainder in Fee, make a Feoffment to another, each giveth his Estate, *viz.* the Lessee for Life his Estate by Livery, and the Fee-simple in Remainder or Reversion, doth move and pass from him in the Remainder or Reversion: And if Tenant for Life, and he in Reversion make a Gift in Tail, rendring Rent, the Lessee shall have the Rent during his Life; for the making of a greater Estate is not here a Forfeiture by him, because he joineth with him in Reversion. And at Common Law, if the Lessee for Life and the Reversioner had made a Feoffment by Deed, the Feoffee should have held of the Lessee during Life. 6 *Rep.* 10.

If a Person be Tenant in Tail, with the Reversion expectant, and he bargain and sell the Land to another in Fee or in Tail by Deed indented and inrolled, the Estate which passeth by the Bargain and Sale shall be derived out of both his Estates; and none shall avoid the same, but the Issue in Tail: And if such Tenant in Tail levy a Fine, or

116 Of Remainders, Reversions,

suffer a Recovery, the Estate-tail is barred. But if there be Tenant for Life, the Remainder or Reversion over in Tail, and a Common Recovery is had against him in Remainder or Reversion, it shall not bar the Estate-tail; for there is no good Tenant to the *Præcipe* in this Case. 1 Rep. 48. 3 Rep. 6.

A Reversion of an Estate of Inheritance, may be granted by Bargain and Sale inrolled, Lease and Release, Fine, &c. But if a Fine is levied of a Reversion, the Conusee presently after the Conuſance, which is the Concord, ought at Common Law to sue out a *Quid juris clamat* against the Lessee or particular Tenant to attorn. If one have a Reversion in Fee, expectant upon a Lease for Years, he may make a Bargain and Sale of his Reversion for one Year, and then make a Release to the Bargainee in Fee; by which the Reversion will pass to the Bargainee: And a Reversioner may covenant to stand seised of his Reversion to Uses, &c. Also a Reversion may be devised by Will. *Bridgm. Conveyan.* 237. 5 Rep. 39. 2 Rep. 25. 2 *Lill. Abr.* 483. 11 Rep. 46.

By the Grant of a Messuage or Lands, the Reversion will pass; but by Grant of a Reversion, Land in Possession will not pass. And a Person having devised a Manor to one for Years, and some other Lands to another and his Heirs; and all the Rest of his Lands to his Brother, and the Heirs Male of his Body; it was held, that these Words *The Rest of the Lands*, did not only extend to the Lands which were not devised before, but to the Reversion in Fee of the Manor, after the Determination of the Estate for Years: And by Devise of all Lands, Tenements and Hereditaments, undisposed of before in a Will, a Reversion in Fee will pass.

and Warranties of Lands. 117

pass. 6 Rep. 36. 10 Rep. 107. Cro. Car. 400. *Allen* 28. 2 *Ventr.* 285.

The Reversion of an Estate passeth by Grant and Attornment, in the Lives of both Grantor and Grantee: This is by the Common Law. There was Lessee for Years, Remainder for Life, Reversion in Fee; the Tenant for Life died, and the Lessee for Years did not attorn to him in the Reversion; yet it was resolved, that it passed without Attornment, and that he might bring an Action of Debt, or have an Avowry. And by the Statute for Amendment of the Law, Grants and Conveyances of Reversions or Remainders are good without Attornment of the Tenants of the Lands, or of the particular Tenants upon whose Estates any such Reversions, &c. shall be expectant or depending: But Notice must be given of such Grant, to the Tenant; before which he shall not be prejudiced by Payment of any Rent to the Grantor, or for Breach of the Condition for Non-payment. *Carter* 5. *Hell.* 73. *Stat.* 4 & 5 *Ann.* cap. 16.

A Grant of a Reversion, during the Life of Tenant in Tail, is good; because he shall have the Services which the Tenant in Tail ought to do, during the Life of Tenant in Tail: But such Grant of a Remainder can never take Effect to any Purpose, and therefore it is void. There were no Reversions or Remainders upon Estates in Tail, at Common Law: And no Grantee of a Reversion could take Advantage of any Condition or Covenant broken by the Lessees of the same Land; but by Statute, Grantees of Reversions may take Advantage of Conditions and Covenants against Lessees of the Lands, as fully as the Lessors and their Heirs; and the Lessees may have like Remedies a-

118 Of Remainders, Reversions,

gainst the Grantees of Reversions, &c. 2 Rep. 51.
1 Inst. 327. 32 Hen. 8. cap. 34.

No Lease, Rent-charge or Estate, &c. made by Tenant in Tail in Remainder, shall charge the Possession of the Reversioner when the Land comes to him. The particular Estate, and Estate in Reversion, are divers and distinct; and therefore Aid may be prayed of him in the Reversion: Yet these Estates have Relation one to another. Copyholder for Life, cannot by Forfeiture or otherwise destroy the Estate in Reversion; and he that hath a Reversion cannot be put out of it, unless the Tenant be ousted of his Possession also. 2 Lill. 448. 7 Rep. 97. Plowd. 162. Telv. 1.

As those in Reversion or Remainder expectant upon an Estate for Life, had a Writ of Error by the Common Law, on a Judgment given against Tenant for Life, altho' they were not made Parties by Aid Prayer, Voucher, or Resceit; so after the Statute *de donis* 13 Ed. 1. he shall have, who hath a Reversion expectant on an Estate-tail: But he in the Reversion who was not Party to the first Record by Voucher, &c. shall not have Writ of Error 'till after the particular Estate determined; for then he in Reversion or Remainder ought to have the Land in Possession. 3 Rep. 3, 4.

A Reversioner may bring Action of the Case, for Spoiling of Trees; and for any Injury to his Reversion, he may have this Action; but he cannot bring Trespass, which is founded on the Possession: He in Reversion shall have a Writ of Entry at Common Law, where Tenant for Life, &c. aliens the Lands; and also Writ of Intrusion after their Deaths, &c. 3 Lev. 209. 3 Cro. 55. New Nat. Br. 461.

The Grant of Commissioners of a Bankrupt's intailed Lands shall be good; except when the Reversion

and Warranties of Lands. 719

version or Remainder is in the King. *Stat. 21 Jac. 1.* And poor Prisoners seised of an Estate-tail in Lands, &c. (which Intail they have Power to defeat) shall be deem'd seised in Fee-simple as if a Fine had been levied, &c. of the Lands, and so delivered up to Creditors, &c. by *Stat. 10 Geo. 2. cap. 26.*

A Warranty of Lands and Tenements is,

A Covenant Real annexed to Lands, whereby a Man and his Heirs are bound to warrant the same to some other and his Heirs; and that they shall quietly hold and enjoy the Lands, and upon Voucher or Judgment in a Writ of *Warrantia Charta*, to yield other Lands and Tenements to the Value of those that shall be evicted by a former Title: Or else it may be used by Way of Rebutter or Bar, to the Action of the Heir, by the Warranty of his Ancestor. 1 *Inst.* 365.

Warranty may be added to any Conveyance of Lands, Tenements, or Hereditaments: And a Warranty may not only be annexed to Estates of Inheritance or Freehold that are corporeal, which pass by Livery, as Houses and Lands; but also to Freeholds and Inheritances incorporeal that lie in Grant, as Advowsons, Rents, Commons, Estovers and the like, which issue out of Lands or Tenements; and to these last tho' they are newly created, as well as when they are *in esse*. For according to some Opinions, a Man may grant a Rent, &c. out of Land, for Life, in Tail, or in Fee, with Warranty; which Rent may be avoided by the Recovery of the Land out of which it issueth, and then the Grantee may help himself by a *Warrantia Charta* upon the Special Matter. 1 *Co. Inst.* 366, 389.

120 Of Remainders, Reversions,

The Word *Warrant*, maketh the Warranty; and a Deed of Gift, and Exchange, have a Warranty implied by Law: And Warranties are lineal, collateral, or commencing by Disseisin. A Warranty lineal, is where a Man seised of Lands or Tenements in Fee, makes a Feoffment to another, and binds himself and his Heirs by the Deed to Warranty, and hath Issue a Son and dies, and the Warranty descends to his Son; for if no Deed with Warranty had been made, then the Lands should have descended to the Son as Heir to his Father, and he would have convey'd the Discent from Father to Son: This Warranty binds the Right of Fee-simple, and he which demands such Estate, from any Ancestor, shall be barred by such lineal Warranty descending on him; but a Fee-tail shall not be barred thereby, unless he hath Assets in Fee-simple by Discent, from the same Ancestor that made the Warranty. *Litt. Sect. 703, 712.*

1 *Inst.* 374.

A Warranty collateral, is when the Party upon whom the Warranty descends, cannot convey the Title which he hath in the Land from him that made the Warranty, or shew that he is his Heir, &c. As if Tenant in Tail discontinues or alienates the Lands, and then dieth, leaving Issue, and the Uncle of the Issue releaseth to the Discontinuee with Warranty, and dies without Issue; this is a collateral Warranty to him who is Issue in Tail, and such a Warranty is a Bar and bindeth his Right, without any Assets by Discent, it descending upon him, and he cannot make a Title to the Tail from his Uncle. And a Warranty may be collateral, altho' the Blood be lineal, and lineal, tho' the Blood is collateral; for it is in Law judged a collateral Warranty, in Respect that he who maketh it is collateral to the Title of him that the Warranty

and Warranties of Lands. 121

Warranty doth fall on. *Litt.* 717. 1 *Inst.* 371, 376.

The Warranty by Disseisin, is where one that hath no Right to the Freehold of another, entereth upon the Lands and conveyeth the same away with Warranty; which shall not bind, or bar the Person disseised. If a Son purchaseth Lands, and lets the same to his Father for Term of Years, and he enfeoffs another in Fee, and binds himself and his Heirs to Warranty, and the Father dies whereby the Warranty descends on the Son, this shall not bar the Son; because it commenced by Disseisin, the Freehold being then in the Son: And if Tenant for Life, where there is a Remainder in Tail, leases for Years with Agreement with the Lessee, that he shall make a Feoffment of the Land, and then he will Release with Warranty, which is done accordingly; adjudged that this collateral Warranty, commencing by Disseisin, shall not bind the Heir in Tail, upon whom it descended, altho' the Disseisin was not done immediately to him. *Litt. Sect.* 698. *Plowd.* 51. *Noy's Max.* 83. *Cro. Car.* 483.

Before the Statute of *Gloucester*, 6 *Ed.* 1. All Warranties which descended to those who were Heirs to the Warrantors, were Bars to the same Heirs to demand any of the Lands; except the Warranty began by Disseisin: That Statute hath ordain'd, that where Tenant by the Curtesy aliens his Wife's Lands, the Son having no Assets by Descent, may recover the Lands of the Seisin of his Mother, tho' his Father's Deed mentions that he and his Heirs shall be bound to Warranty; but if Land descend to the Heir of the Father's Side, he shall be barred to the Value of that Inheritance. By the 11 *Hen.* 7. *cap.* 20. The Warranty of the Father shall be no Bar to his Son, for Lands which
come

122 Of Remainders, Reversions,

come by the Heritage of the Mother; nor the Warranty of the Mother be binding to the Son, for the Lands coming by the Heritage of the Father, &c. Though neither of these Statutes have provided any Remedy against a collateral Warranty, and the Bar thereof to the Issue in Tail. 1 *Inst. Terms de Ley* 370, 371.

And by the Common Law, If a Man be Tenant for Life, (otherwise than as Tenant by the Curtesy) and alien Lands in Fee with Warranty, and dieth; this shall bind the Heir, that hath the Reversion or Remainder: But this is to be understood, unless the Heir who hath the Reversion or Remainder doth avoid the Estate so aliened in the Life of the Ancestor; for then the Estate being avoided, the Warranty which is annexed to it, is avoided also. 1 *Inst.* 366. By the Act 4 & 5 *Ann.* the Law is altered in this Case; for now Warranties made by Tenant for Life, of any Lands, coming or descending on him in Reversion or Remainder, shall be void; and all collateral Warranties made of any Lands, &c. by any Ancestor who hath not an Estate of Inheritance in Possession therein, shall be also void against the Heir.

In Deeds containing *Dedi & Concessi* such a Tenement, &c. to be holden of the Feoffor and his Heirs, by certain Service, without any Clause of Warranty, he and his Heirs are bound to Warranty: But when the Land is to be holden of the chief Lord of the Fee, or of others, and not of the Feoffors and their Heirs, reserving no Service, and without the aforesaid Clause; here the Heirs of the Feoffor shall not be bound to Warranty: However the Feoffor himself during his Life is obliged to warrant the Land, by Force of his own Grant. 4 *Ed. 1. cap. 6.*

and Warranties of Lands. 123

No Fine nor Warranty shall bar any Estate in Possession, Reversion, or Remainder, which is not divested and put to a Right: And to every good Warranty in a Deed, to make it binding, the Person that doth warrant must be a Person able; and it is necessary that there be some Estate to which the Warranty is annex'd, to support it; that the Warranty descend upon him who is Heir of the whole Blood by the Common Law, to him that made it, and not upon another Heir; and that the Heir claim by the same Right as his Ancestor; that it take Effect in the Life-time of such Ancestor, and he be bound thereby; and the Estate of Freehold, which is to be barred be put to a Right before, or at the Time of the Warranty; and that he to whom the Warranty descends, have then but a Right to the Land. 1 *Inst.* 367, 384, 388. 10 *Rep.* 96, 97.

One that makes a Warranty, may make it as large, or strait as he pleases: If the Warranty is made for Life, or in Tail, 'tis good and shall bind for so long only. But if Tenant in Fee-simple that hath a Warranty for Life, either by an express Warranty, or by *Dedi*, be impleaded and vouch, he shall recover a Fee-simple in Value, altho' his Warranty were but for Term of Life; because the Warranty extends in that Case to the whole Estate of the Feoffee in Fee-simple: Though if there be Tenant for Life with Warranty, he shall recover in Value but an Estate for Life; for the Warranty doth extend no farther than to that. Where there are several Estates recover'd on a Warranty, the Tenant shall vouch and recover in Value several Times; but for one and the same Estate, he shall never recover but once in Value; and altho' the Land recovered is evicted, yet he shall never take Benefit of that Warranty afterwards. 1 *Inst.* 387, 393. *Dyer* 42.

124 Of Remainders, Reversions,

A Man binds himself and his Heirs to Warranty; by this they are not bound to warrant new Titles, or any Right that commences after the Warranty made, but such as were *in esse* at that Time. If one make an Estate, and grant to warrant the Lands, but doth not say for how long; it shall be taken for so long as the Estate to which the Warranty is knit doth last: A Person grants to warrant Lands to another, and says not against what Persons; here it shall be held a general Warranty against all Men. But no Warranty can enlarge an Estate granted; for if a Lessor by Deed doth release to his Lessee for Life, and warrant the Land to him and his Heirs, it shall not make his Estate greater. 1 Rep. 1. 1 Inst. 389. Bridgm. 77.

A Warranty according to Law is intire, and extends to all the Lands, and is generally a Bar to every Person on whom it descends, of all the Right he hath in the Land; and where several have a Right, jointly or severally, every one of them are barred; and if one hath a Right, and the other nothing, he who hath the sole Right shall be barred of the Whole, the intire Warranty descending on the general Heir: Though there is this Difference as to Warranties; where the Entry is gone, and only a Right of Action left, there a Warranty descending upon the Heir at Law shall bind; but where there is a Right of Entry, it shall not bind. 8 Rep. 54. 2 Lil. Abr. 684.

If any Person make a Deed with Warranty, by which his Heir should be barred, and after the Warrantor is attainted of Felony; his Heir shall not be bound by such Warranty, for it cannot descend upon him, the Blood being corrupted. And if a Warranty descends on an Infant, it shall not bind him, in Case his Entry into the Lands be lawful; but he must take Care not to suffer a Discent after his

and Warranties of Lands. 125

his full Age, before he hath made his Re-entry.
Litt. 1. Rep. 140. Poph. 71.

A Successor only in Case of a Corporation, shall not be bound by the Warranty of his natural Ancestor: And he that comes into Land meerly by Act of Law, as the Lord by Escheat, &c. shall never take Advantage of a Warranty; but it is otherwise where the Estate arises by Limitation of Use, or other Act of the Party. A Warranty in Law, may bind the Heir, altho' it never bound the Ancestor, and may be created by Last Will and Testament: As if the Testator devise Lands to a Man for Life or in Tail, reserving a Rent; here is a Warranty in Law, of which the Devisee shall take Advantage; but no express Warranty can be created by Will in Writing without Deed, and a Will is not a Deed. *1 Inst. 370. 3 Rep. 62. 1 Inst. 386.*

If the Estate the Warranty is annexed to be spent, the Warranty is gone: So if a Feoffment with Warranty be made to Two or more, and they being Jointenants, do after by Deed make Partition. But where a Person enfeoffs two Men and their Heirs, and a Feoffment is made in Fee by one of them; the other may notwithstanding have the Benefit of the Warranty. A Warranty may be discharged, by a Release of all Warranties; by Release of all Covenants real, or of all Demands; but a Release by Tenant in Tail of the Warranty, shall not bar the Issue: And Warranties may be defeated, in the Whole or as to Part thereof, by Defeasance not to take Advantage by *Warrantia Chartæ*, or Voucher, &c. *10 Rep. 96. 6 Rep. 12. 1 Inst. 385, 393.*

Of Estates in Dower, and Jointures, &c. and Tenant by the Curtesy of England.

DOWER is that Estate or Portion which a Widow hath of the Lands of her Husband after his Decease, for her Maintenance: And by the Common Law, is a third Part of such Lands or Tenements whereof the Husband was sole seised in Fee-simple, or Fee-tail general, during the Coverture; and this the Widow is to enjoy during her Life. 1 Co. Inst. 30.

There is also a Dower by Custom, which is that Part of the Husband's Estate to which the Widow is intitled after the Death of her Husband, by the Custom of any Manor or Place, so long as she lives sole and chaste; and this is more than one third Part, for in some Places she shall have half the Land, as by the Custom of *Gavelkind*; and in divers Manors the Widow shall have the Whole for her Life, which is called her *Free-Bench*: But as Custom may enlarge, so it may abridge Dower to a fourth Part. 1 Inst. 33.

And formerly there was Dower *ad ostium Ecclesie*, or at the Church Door, made by the Husband himself immediately after the Marriage, who named such particular Lands of which his Wife should be endowed, not more than the third Part, &c. And Dower *ex assensu patris*, which likewise was of certain Lands assign'd by a Son and Heir Apparent who was the Husband, with the

Consent of his Father, and always put in Writing as soon as the Son was married: The Certainty here appearing, the Wife after the Death of her Husband might enter into the Lands without any other Assignment; and thereupon would be concluded to claim other Dower; but she might refuse the Dower thus appointed, and then be endowed after the Course of the Common Law. Also Dower *de la plus Belle* was an ancient Dower, where the Wife was endowed with the fairest Part of her Husband's Estate, &c. But these three last Kinds of Dower are now out of Use. 1 *Inst.* 34. *Litt. Sect.* 39, 41. 1 *Nelf. Abr.* 679.

By our Law, there are three Things necessary to intitle Dower, *viz.* Marriage, Seisin, and Death of the Husband: And a Wife shall be endowed of a Seisin in Law, as well as a Seisin in Deed; as where Lands and Tenements descend to the Husband, before Entry he hath but a Seisin in Law, and yet the Wife shall be endowed, tho' it be not reduced to an actual Possession. And it is not requisite that Seisin should continue during the Coverture; for if the Husband aliens or grants away the Lands, &c. the Wife shall nevertheless be endowed: And if Lands are exchanged by the Husband for other Lands, the Wife may have Dower of which Lands she will, as the Husband was seised of both the Lands. 1 *Inst.* 31, 32, 35.

In Case a Wife be endow'd of her third Part of the Lands of the Husband, and afterwards she is evicted by an elder Title, she shall have a new Writ of Dower, and be endowed of the other Lands: Tho' this is where it is the immediate Estate descended to the Heir, and not when it is the Estate of an Alienee. The Wife is dowable where Lands were recovered against the Husband by Default or Covin: And a Woman deforced of her

her Dower shall recover Damages, viz. the Value of her Dower from her Husband's Death. But where the Estate which the Husband hath during the Marriage is ended, there the Wife shall lose her Dower: Yet of an Estate-tail in Lands determin'd, a Woman shall be endowed. *9 Rep. 17. 2 Danv. Abr. 670. 1 Inst. 32. Stat. 13 Ed. 1. & 20 H. 3.*

A Woman shall not be endowed of the Goods of her Husband; nor of a Castle, or Capital Mesuage of a Barony, &c. but of all other Lands and Tenements generally she may, and she shall hold the third Part of her Husband's Lands during her Life, whether she hath Issue by him or not. And if a Woman be of the Age of nine Years, at the Death of her Husband, she shall be endowed, of whatsoever Age he is; because after the Death of the Husband, the Marriage is adjudged lawful: And the Wife is, as soon as she can after the Husband's Decease, to demand her Dower, lest she lose the Value from the Time of his Death. *1 Inst. 35, 33.*

If there are two Jointenants of certain Lands in Fee, and one alieneth that which belongs to him to another in Fee-simple, who taketh a Wife, and afterwards dies; in this Case the Wife shall have for her Dower the third Part of the Moiety which her Husband purchased, to hold in common with the Heir of the Husband, and the other Jointenant that did not alien: For here her Dower cannot be assigned by Metes and Bounds. But a Wife shall not be endow'd of Lands or Tenements which her Husband holdeth jointly with another, at the Time of his Death; only where he holds in common: And the Reason of this Diversity is, because the Jointenant that survives, claims the Land by the Feoffment, and by Survivorship, which is above the Title of Dower. *Litt. Sect. 44 & 45.*

A Conufee of a Fine grants and renders the Land to the Conufor, the Wife of the Conufee ſhall not have Dower of ſuch Eſtate; for it is not poſſible that the Husband could have endowed her of it, being never ſeiſed as he ought to be: And if a Man be Tenant in Fee-tail general, and make a Feoffment in Fee, and takes back an Eſtate to him and his Wife, and to the Heirs of their two Bodies, and they have Iſſue, and the Wife dieth; and then the Husband taketh another Wife, and he dies, this Wife ſhall not be endow'd of the Land, for during the Coverture he was ſeiſed of an Eſtate-tail Special, and yet the Iſſue which the ſecond Wife may have by Poſſibility may inherit the Eſtate. 1 *Inſt.* 31. *Dyer* 41.

As in all Caſes where a Man taketh a Wife ſeiſed of ſuch an Eſtate of Lands or Tenements, that the Iſſue which he hath by his Wife may poſſibly inherit the ſaid Eſtate that the Wife hath, as Heir to the Wife; there after the Wife's Deceafe he ſhall hold the ſame Lands by the Curteſy of *England*: So in every Caſe where a Woman takes a Husband, ſeiſed of ſuch an Eſtate in Lands, &c. as by Poſſibility it may happen, that the Wife may have Iſſue by her Husband, and that ſuch Iſſue may inherit the ſaid Lands, &c. of the Eſtate which the Husband hath, as Heir to the Husband; of ſuch Lands and Tenements ſhe ſhall have her Dower; but otherwiſe not. And altho' the Wife be ever ſo old when married, ſhe ſhall be endowed; for Women in ancient Times have had Children at that Age, to which no Woman doth now attain; and the Lord *Coke* ſays in his Time, a Woman above threeſcore Years old had a Child. *Litt. Seſt.* 52, 53. 1 *Inſt.* 40.

If Lands are given to a Man, and the Heirs that he ſhall beget of the Body of his Wife, in which

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130 Of Estates in Dower,

Case the Wife hath nothing in the Land, and the Husband hath but an Estate in special Tail; yet if the Husband die without Issue, the same Wife shall be endowed of the said Lands, because the Issue which she by Possibility might have had by the same Husband, might have inherited the same Lands: But if the Wife dies, living her Husband, and after the Husband takes another Wife and dies, his second Wife shall not have Dower in this Case. *Litt. Sect. 53.*

At Common Law, Dower is assign'd by the Sheriff, by the King's Writ; or by the Heir, &c. on an Agreement among themselves: And by the ancient Law of *England*, till *Magna Charta*, a Woman was to continue a whole Year in the Husband's House for the Assignment of her Dower. But by that Statute, a Widow shall immediately after the Death of her Husband have her Marriage Inheritance, and remain in his chief House forty Days, within which Time Dower is to be assign'd her of the third Part of all his Lands, &c. And if a Wife accept and enter upon less Land than the Third of the Whole, on the Sheriff's Assignment, she is barr'd to demand more. *2 Inst. 17. Moor 679. Stat. 9 H. 3. c. 7.*

But if there be a fraudulent and partial Assignment of Dower by the Sheriff, Relief may be had against it in Chancery: And on the other Hand, if a Wife be wrongfully endow'd by the Guardian during the Minority of an Heir, he at full Age shall be righted. Also if Assignment be made by any Disseisor, Intruder, or Wrong-doer, of Lands or Tenements, and they came to the Estate by Collusion and Covin between the Widow and them; altho' the Widow hath just Cause of Action, and the Assignment be indifferently made by the Sheriff of an equal third Part, yet shall the Disseeisee,

Disseisee, &c. avoid it; for here the Covin shall suffocate and destroy the Right that appertained to her; tho' if there be no Covin, and it be not prejudicial to the Disseisee, the Assignment is good. 13 Ed. 1. 1 Inst. 35. Plowd. 51. 1 Vern. 218. Jenk. Cent. 193.

If the Widow accepts of Dower of the Heir, against common Right, she shall hold the Land subject to the Charges of the Husband; 'tis otherwise if she be endowed against common Right by the Sheriff: And by Provision of Law, the Wife may take a third Part of the Husband's Lands, and hold them discharged. In case Dower be assign'd a Woman on Condition, or with an Exception, the Condition and Exception are void: If Land is assign'd to a Woman for Years, in Recompence of her Dower, this is no Bar of Dower; for this is not such an Estate as she should have therein: So where a Rent is assign'd, it must not be for less Estate than for her Life. But if after the Death of the Husband, his Heir makes a Lease for Years of the Land to the Wife; during this Lease her Dower is suspended. 2 Danv. Abr. 672, 668. Cro. Eliz. 451. Hob. 153. Jenk. Cent. 73.

The Endowment by Metes and Bounds, according to common Right, is more beneficial to the Wife than to be endowed against common Right; because there she holds the Land charged, in respect of a Charge made after the Title of Dower. If the Husband grants a Rent out of four Manors, and his Wife is endowed by the Heir of one Manor in Lieu of all, she shall hold it discharged. And where the Husband makes a Gift in Tail, reserving a Rent to him and his Heirs, and after he takes Wife and dies, the Wife shall be endowed of this Rent; because it is a Rent in Fee, and by Possibility may continue for ever: But if a Man

maketh a Lease for Life, rendring Rent to him and his Heirs, his Wife shall not have Dower of this Rent, there being but a particular Estate therein, and no Fee-simple. Tho' the Wife shall be endowed of the third Part of the Reversion of Lands, expectant on a Lease for Years made by the Husband; and of a Rent reserved thereon. 1 *Inst.* 32. 2 *Danv.* 672. *Lutw.* 729.

If a Sheriff assigns a Rent out of Lands in Lieu of Dower, the Widow's Acceptance of the Rent will bar her Dower out of the same Land, tho' not of other Lands not in Demand. Of a Rent-Service, Rent-charge, and Rent-seck, the Wife shall be endowed: But of an Annuity, that chargeth only the Person, and issueth not out of any Lands or Tenements, she shall not be endow'd; and if the Freehold of the Rents was suspended before the Coverture, and so continue during the Coverture, she will not be intitled to Dower thereof. Tho' if after the Coverture the Husband doth extinguish the Rents by Release or otherwise, yet she shall be endowed of them; for as to her Dower, in the Eye of the Law, they have Continuance. 2 *And.* 31. *Dyer* 91.

A Man ought to have a Fee or Tail, and Freehold in Possession, otherwise the Wife is not dowerable: If the Husband hath an Estate in Land for Life, Remainder to B. in Tail, Remainder to the right Heirs of the Husband, and dies during the Life of B. the Wife shall not be endowed, for it is not a Fee in Possession. But in Case Tenant for Life surrenders to the Remainder-Man in Tail or Fee, his Wife shall be endowed, because the Estates are united: And if Lessee for Life leases the Land to the Lessor, and the Heirs of his Body, for the Life of the Lessee, and after the Lessor dies, living the Lessee, the Wife of the Lessor shall have Dower,

Dower, he having the Fee and Freehold in him. Also if the Husband hath a Fee and Freehold defeasible, yet his Wife shall be endowed till it is defeated. 2 *Danv. Abr.* 656, 657.

If a Husband be Tenant in special Tail of Lands, the Remainder to his own right Heirs, and he takes another Wife, and then becomes Tenant after Possibility of Issue extinct, and dies, his Wife shall have her Dower in the Lands: So if the Remainder had been limited to him in general Tail. But where there is Lessee for Life, the Reversion to the Husband in Fee, and the Lessee leases the Land to the Husband for the Life of such Husband, and then the Husband dies, and the Lessee dies; here the Wife shall not be endow'd, tho' there was a Possibility of a Reversion during the Coverture, as to the Freehold. 2 *Danv.* 656. 1 *Inst.* 42. 1 *Rep.* 137.

In Case there be Tenant for Life, Remainder to Trustees for Ninety-nine Years, with Remainder to the Tenant for Life in Tail, and Tenant for Life dies, his Wife shall be endowed notwithstanding the intervening Estate; for that being for Years only shall not be regarded: At Common Law the Freeholder might destroy it by a feigned Recovery; if the Remainder in Tail had been in a Stranger, it would not have obstructed an Action of Waste, and in this Case the Party died seised of an Estate-tail: It would have been otherwise, if the mean intervening Estate had been for Life; for that would be an Obstruction to Dower as well as Waste. 1 *Salk.* 254. 1 *Leon.* 168.

A Tenant in Fee-simple, in Consideration of a Sum of Money paid by B. bargained and sold the Lands to him and his Heirs, to the Intent that the Bargainee should redeem it to the Bargainor for Life, rendring a Pepper Corn, with a Condition

that if he repaid the Money at the End of Twenty Years, then the Bargain and Sale should be void; the Bargainee redeemed the Land accordingly, and died, it was adjudged that his Wife should be endowed, because by the Bargain and Sale the Land was vested in her Husband; and tho' he immediately made the Redemise, according to the Agreement, yet the Party to whom it was made shall hold the Land subject to the Title of Dower: It was his Folly that he did not join another with the Bargainee. And when a Woman is intitled to Dower by Act in Law, a Court of Equity shall not relieve against her Claim; tho' it was said this Case was in Nature of a Mortgage, and that the Wife of a Mortgagee, if the Mortgage is redeemed, shall not be endow'd, no more than the Wife of the Conusee of a Fine, upon a Grant and Render, because the Estate is in him, and out again immediately. *Cro. Car.* 190.

If where there is an Estate in Lands in Fee, the Grandfather dies seised, and the Lands descending to the Father, he dies, and the Son endows the Grandmother who dies, yet the Wife of the Father shall not be endowed; for by Relation the Father had but the Reversion: But in such Case, if the Son enters, and endows his Mother of a third Part, against whom the Grandmother recovers a third Part, and dies, the Mother shall enter again into the Lands recovered by the Grandmother; by Reason she had therein an Estate for her own Life, which in Judgment of Law was greater than the Estate for the Life of the Grandmother. And if the Grandfather enfeoffs the Father of the Land, the Wife of the Father, after the Death of the Wife of the Grandfather, shall be endowed of the Part assign'd to the Grandmother; for the Purchase which took Effect in the Life of the

the Grandfather, was defeated only as to the Grandmother, so that in this Case there shall be Dower of Dower. 1 *Inst.* 31. 2 *Danv. Abr.* 657.

The Judgment in Dower is to recover a third Part of Lands and Tenements by Metes and Bounds; but this may not be of a Mill, for if it were, neither of the Parties could use their Parts. If Lands are improved, the Wife is to have one Third according to the improv'd Value, at the Time of the Assignment: And if the Ground be sowed by the Husband, and he dying, this Land sowed is assign'd for her Dower, she shall have the Corn; for she shall be in of the best Possession of her Husband, above the Title of the Executor. And of Inheritances that are intire, whereof no Division can be made, tho' a Woman cannot be endowed of the Thing itself, she shall have Dower thereof in a special and certain Manner; as of the third Presentation to a Church Benefice; the third Toll-Dish of a Mill, or the Profits of the Mill every third Month; of Common certain, a third Year; the third Part of the Profits of a Fair, Market, an Office, Dove-house, Piscary; and of Courts, Fines, Heriots, &c. Also a Woman shall be endowed of Tithes, the surest Endowment of which, is of the third Sheaf; for what Land shall be sown is uncertain. 1 *Inst.* 32. 2 *Inst.* 81. 1 *Lev.* 182.

A third Part of a Manor may be assign'd by the Sheriff in common, as Dower to a Woman, without setting it out by Metes and Bounds. If a Woman be endowed of an Advowson, the Sheriff may assign her the third Part of the Advowson; and not only the third Part of the Profit, or third Presentation: And if a Widow recovers Dower of a Rectory impropriate, where there is not any Glebe, the Sheriff shall put her in Possession of the third Part of the Tithes generally, and not of the

136 Of Estates in Dower,

Tithes that issue out of any third Part of the Land of the Parish in certain. 1 *Roll. Abr.* 683.

Dower may not be assign'd to a Woman with a Remainder over, because she comes in by her Husband; and then if it should be a good Remainder, it would be without a particular Estate. The Wife shall not be endowed of a Trust-Estate, if the Husband before Marriage conveys the Estate in such Manner as to put the legal Estate out of him, tho' the Trust be limited to him and his Heirs: And of a Use not executed, a Woman may not be endowed; neither shall the Man be Tenant by the Curtesy. If a Man devises Lands to his Executors for Payment of Debts, and after the Debts paid, to his Son in Tail; and the Son marries, and dies before the same are paid, the Estate of the Executors is only a Chattel Interest, and therefore will not hinder the Son's Wife of Dower; but the Wife's Dower cannot commence in Possession, nor Damages be recovered for detaining it, but from the Time of the Debts being paid. *Plowd.* 25. 1 *Rep.* 123. *Dyer* 11. 2 *Vern.* 404. *Abr. Ca. Eq.* 217.

A Widow may have Judgment to recover her Dower, with a *Cessat Executio*, in Case there be any Thing objected against precedent to the Title of Dower, &c. till that is determined: A Lady's Husband was seised in Tail of the Lands in Question; but there was a certain Term therein prior to his Estate, and he sold the Estate to another, who had Notice of the Marriage; but his Wife not joining, after his Death, she recovered Dower, with a *Cessat Executio* during her Term, and then brought a Bill in Chancery to have the Term removed, and have the Benefit of her Judgment and Recovery at Law; but the Court held, that this being against a Purchaser, Equity ought not to give

give her any Relief: Tho' where a Term for Years was assigned in Trust to attend the Inheritance, and being set up by the Heir at Law only in Bar of the Widow's Title; it was adjudged for the Widow, that the Term should not stand in her way. 1 *Nels. Abr.* 684. 1 *Salk.* 291. 1 *Vern.* 350. 2 *Chan. Cas.* 172.

A Dowress may redeem a Mortgage, paying her Proportion of the Mortgage Money; and if she pays more than the third Part, she and her Executors may hold over the Lands till repaid: It is the same of a Jointress, where a Jointure is made of Lands mortgaged, &c. And if the Wife joins with her Husband in a Mortgage, and levies a Fine, with an Intent to bar her Dower, and in Consideration thereof the Husband agrees that she shall have the Equity of Redemption, in Lieu of her Dower; and he afterwards Mortgages the same Estate to others, tho' this Agreement be fraudulent against the subsequent Mortgagees, so as to intitle the Wife to the whole Equity of Redemption; yet it has been decreed, that she shall have her Dower if she survives her Husband. 1 *Vern.* 294. *Abr. Ca. Eq.* 219, 222. See *Stat. 4 & 5 W. & M. c.* 16.

If a Person gives by Will certain Lands, and Money, &c. to his Wife, in Lieu and Satisfaction of Dower, the Wife cannot have both; but she may wave the Devise, and claim her Dower. But in Case a Man devises Lands to his Wife, during Widowhood, without expressing any Consideration, the Wife shall have both the Lands devised, and her Dower; because a Will imports a Consideration in itself, and cannot be averred to be in Bar of Dower, unless it be so expressed; and Dower cannot be of less Estate than for Life of the Wife; also a Right to Dower and Freehold may
not

138 Of Estates in Dower;

not be barred by collateral Recompence. 1 *Ventr.* 340. 4 *Rep.* 1. 2 *Cro. Eliz.* 128.

If Lands are given to Husband and Wife, and the Heirs of the Husband, or the Heirs of their two Bodies, or to their Heirs, and afterwards the Husband dies; now if she will, she may wave and refuse the Joint-Estate, and bring her Writ of Dower, and thereby in Judgment of Law the Husband shall be sole seised from the Beginning. A Jointure or Estate made to the Wife in Satisfaction of her Dower, was no Bar of Dower at the Common Law; tho' by the Statute 27 *H.* 8. If the Jointure be made before Marriage, the Wife cannot wave it and claim her Dower at Common Law; but if it be made after Marriage, she may wave the same, and demand Dower. A Jointure is made before the Coverture, and after the Husband and Wife alien by Fine those Lands, she shall not be endow'd of any other Lands of the Husband: But if such Jointure had been made after the Marriage, notwithstanding the Alienation of the Husband and Wife by Fine, as her Estate was originally wavable, and her Time of Election came not till after the Death of the Husband, she may claim her Dower in the Residue of his Lands. 3 *Rep.* 27. 1 *Andersf.* 350. 1 *Inst.* 36.

Dower is much favoured in Law, being for the Benefit of Widows: A Widow Tenant in Dower shall be free from Toll; and shall not be distrained for Debt due to the King by her Husband. The Wife of one *Non compos mentis*, of an Ideot, Outlaw, or one attainted of Felony, may be endowed: But not of one attainted of Treason; nor the Wife of an Alien, or a Jew, &c. By Statute, a Wife shall have her Dower, altho' her Husband were attainted, convicted, or outlawed of Felony, &c.
saving

Saving the Right of others. 1 *Inst.* 31. *Stat.* 1 *Ed.* 6. c. 12.

There is an extraordinary Case in our Books, where a Man Tenant for Life, with Remainder in Tail to his Son, and Remainder to the right Heirs of the Father; he and his Son, who had no Issue, were both attainted of Felony, and both executed at one Time: And upon a Question, if the Father should be now seised of an Estate in Fee, so as his Wife might be endowed, it was given in Evidence on a Writ of Dower brought by the Wife, that the Father moved his Feet after his Son was dead; and thereupon the Jury found, that he died seised of an Estate of which the Wife might have Dower, and she had Judgment accordingly. *Cro. Eliz.* 502. *Moor* 528.

In a Writ of Dower to Plea of Attainder of the Husband for Treason, the Woman replied, that before the Attainder and committing the Treason, and after the Coverture, her Husband was seised of such Lands in Fee; and made a Feoffment thereof to a certain Person, whose Estate the Defendant then had, &c. But it was adjudged, that the Woman should be barred of her Dower; for by the Statute 5 & 6 *Ed.* 6. c. 11. it is enacted, that the Widow of any Man attainted of Treason shall not be received to ask, demand or have Dower, of any of her Husband's Lands, whilst the Attainder is in Force. *Dyer* 142.

If a Wife commits Treason or Felony, she shall lose and forfeit her Dower. And if the Wife be divorced from the Husband for Adultery, which does not dissolve the Bond of Marriage, but is only *à Mensa & Thoro*, it is said this shall bar her of Dower: Tho' by my Lord *Coke*, the Divorce ought to be *à vinculo Matrimonii*, for Precontract, Consanguinity, Affinity, &c. If the Wife elope from her

740 Of Estates in Dower,

her Husband, that is, if she leave the Husband, and go away and tarry with an Adulterer, and willingly live with him, without being reconciled to her Husband, she shall lose her Dower: And if she goes willingly with or to the Adulterer, this is a Departure and Tarrying, altho' she doth not stay continually; so if she abide with him after against her Will, or if he turn her away; or if she be obliged to cohabit with her Husband by the Censures of the Church, in all these Cases she loseth her Dower. 2 *Inst.* 453. *Roll. Abr.* 680, 681. 1 *Inst.* 32.

A Wife tho' ravished, if she stays with the Adulterer during the Life of the Husband willingly without Reconcilement, she shall lose her Dower: But if after an Elopement the Husband be reconciled to the Wife, and she lives with him again, she shall be endowed; and if her Husband and she demean themselves as Husband and Wife, it is Evidence of Reconciliation. If the Wife elopes, and afterwards lives with her Husband Years and Days till his Death, with the good Will and Assent of the Husband, without Coercion of the Church, this shall not bar her of Dower, tho' it is not averred that she was reconciled to her Husband. In case a Man grants his Wife with her Goods to another, and after the Wife by Virtue of the Grant lives with the Grantee all the Life of the Husband, she forfeits her Dower, because she lived in Adultery, notwithstanding the Grant of the Husband: A notable Case of which is in *Coke's Second Institute*, of *Margery* the Wife of *John de Camois*, who by her Husband's Consent lived with *Sir William Pannell*. *Dyer* 196. 2 *Inst.* 435. 2 *Danv. Abr.* 662. See *Stat. Westm.* 2. 13 *Ed.* 1. *cap.* 34.

It is holden, that if the Wife elope from her Husband, &c. altho' she be barred of her Dower thereby,

thereby, yet the Issue shall inherit the Estate. If the Husband be attainted of Felony, the Wife is to be endowed; and yet the Issue shall not inherit the Lands, which the Father had in Fee-simple: But before the Statute of 1 *Ed. 6.* in such Case, if the Husband were seised of Land in general Tail, the Issue should have inherited, but the Wife should not have been endowed of the Lands. 1 *Inst.* 40.

Where a Widow releases all her Right to him in Reversion, her Dower is extinct; but if the Release be of all Actions real to the Son, who hath but a Reversion expectant on a Freehold, it will not extinguish the Dower. The detaining of Charters from the Heir of the Husband, concerning the same Lands of which the Widow demands Dower, is a good Plea by the Heir in Delay of her Dower; But if she deliver up the Evidences, she shall have Judgment; tho' if she denies the Detainer, and it is found against her, she thereby loses her Dower; for she is not worthy to be endowed of the Inheritance of her Husband, who will wrongfully detain from his Heir the Charters by which he should defend it. Yet if the Wife be with Child, she may detain the Charters from the Heir for the Time being, and keep them for the Infant. 8 *Rep.* 151. *Hob.* 199. 9 *Rep.* 18.

If a Wife levies a Fine with her Husband, she debars herself of her Dower: And if a Man and his Wife enfeoff two Persons by Deed, to hold to them and their Heirs; and after the Feoffor and his Wife levy a Fine to them, and the Heirs of one of them, they shall nevertheless have both the Fee-simple, as they had before, for the Fine shall enure as a Release to extinguish the Right of the Wife only. By a common Recovery had against the Husband and Wife, of the Husband's Lands, the

142 **Of Estates in Dower,**

the Wife is debarred of her Dower; and yet she shall not have any Recompence in Value, as other Persons are supposed to have in such Case. 2 Rep. 74. Plowd. 514.

A Widow brings a Writ of Dower against the Heir, and he comes into Court upon the Summons, and pleads that he hath been always ready, and yet is to render Dower, &c. if the Wife hath not requested her Dower, she shall not recover the mean Value and her Damages, which in that Case will be lost; for the Heir holdeth by Title, and doth no Wrong 'till such Request be made. The Statute of *Merton*, 20 H. 3. which gives Damages to the Widow, ordains that they shall be recover'd only in Writ of Dower *unde nihil habet*, not in Writ of Right of Dower, for Damages are not recoverable in any Writ of Right; nor in a Writ of Dower *ad ostium Ecclesie*, &c. because she may enter into such Dower without Suit: The Husband must also here die seised of the Freehold and Inheritance; she must be able to prove a Demand of the Dower, and she must not delay her self, &c. This Statute extends to Dower of Copyholds; but Damages are not given where Dower is assign'd in Chancery, nor where the Heir or Feoffee assign Dower; for she must recover by Plea: And the Damages are to be assess'd to the Time of the Judgment obtained, not to the Time of the Inquisition on the Writ of Inquiry. 1 Inst. 331. 1 Leon. 56.

In Dower against eight Defendants, Two of them confessed the Action, and the other pleaded in Bar, and Judgment was immediately given against those Two who had confess'd the Action, that the Demandant should recover against them the third Part of two Parts into eight Parts to be divided; and afterwards the Plea in Bar being ill,

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the Demandant had Judgment to have Seisin against the other six Defendants, of the third Part of six Parts, into eight Parts to be divided. *Dyer* 187.

As the Wife cannot enter into her Dower by the Common Law after her Husband's Death, but is driven to her Writ of Dower to recover the same, wherein sometimes great Delays are used; therefore of great Estates, Jointures are now usually made in Satisfaction of Dower, and these Actions of Dower are not so frequently brought as they were formerly. See 1 *Inst.* 32. The Wife of a Man who is banished, shall have Dower in his Life-time, if she has no Jointure; and shall so enjoy a Jointure, &c. *Jenk. Cent.* 4.

As to Jointures made of Estates in Lands;

A Jointure is a Settlement of Lands and Tenements, made to a Woman in Consideration of Marriage, for Term of Life; and is generally so called, because it is granted *Ratione Junctura in Matrimonio.* 3 *Rep.* 27.

By the Lord Coke, a Jointure is defined to be a Bargain and Contract of Livelihood, adjoined to the Contract of Marriage; being a competent Provision of Freehold for the Wife, of Lands or Tenements, &c. to take Effect after the Death of the Husband, for the Life of the Wife at least, if she her self be not the Cause of the Determination or Forfeiture of it: Of which you may read at large in *Vernon's Case.* 1 *Co. Inst.* 36.

To the making of a perfect Jointure, according to the Statute of 27 *H. 8. cap.* 10. to bar Dower, several Things are to be observed: It must be
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made to take Effect for the Life of the Wife in Possession or Profit, presently after the Decease of the Husband; it is to be for the Term of her own Life, or a greater Estate; but it may be limited whilst she remains a Widow, &c. for her Jointure; (and then the Widowhood shall be construed an Estate to her for Life, because it cannot determine without her own Act.) It must be made to her self, and to none other for her; it is to be expressed to be in Satisfaction of her whole Dower, and not a Part thereof; and it may be made either before or after Marriage, but if made after, the Wife may claim Dower, and wave her Jointure, as I have before observed under Dower. 1 *Inst.* 36. 4 *Rep.* 3.

A Jointure being so made, the Woman shall not have both the Jointure Lands and her Dower: But if a Man makes a Feoffment in Fee of Lands or Tenements, before or after the Marriage, to the Use of the Husband for Life, and after to the Use of another Person for Life, and then to the Use of the Wife for her Life, in Satisfaction of her Dower; this is no Jointure within the Statute, because by the first Limitation it was not to take Effect in Possession or Profit, presently after the Husband's Death; and altho' the second Life should die living the Husband, and after the Death of the Husband the Wife entereth, this is no Bar of her Dower, but she shall have that also. The Estate must be either in Fee-tail, or for her own Life; for an Estate for the Life or Lives of one or many others, or to her for an hundred or a thousand Years, &c. if she live so long, or without such Limitation, it bars not Dower, tho' expressly made in Satisfaction thereof: And if an Estate be made to others in Fee-simple, or for her Life upon Trust, so as the

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Estate remains in them, notwithstanding it be for her Benefit, and by her Assent, yet is this no Bar of her Dower. 1 *Inst.* 36.

Before the Making of the Statute 27 *Hen.* 8. the greatest Part of the Land in *England* was conveyed to Persons to Uses; and as the Wife was not dowable of Uses, her Father or Friends upon her Marriage procur'd the Husband to take an Estate from his Feoffees, or others seised to his Use, to him and to his Wife before or after Marriage for their Lives or in Tail, for a Provision for the Wife after the Husband's Death: Then came this Statute, which transfers the Possession and Estate of the Lands to the Use, by which the Husbands were seised accordingly, and by Consequence if it had not been further enacted, the Wives would have as well their Dower as their Jointures; and for that Reason, the Branches concerning Jointures were added to the said Statute. 4 *Rep.* 1, 2. *Dyer* 266.

And all other Settlements in Lieu of Jointure, not made according to the Statute, are Jointures at Common Law, and no Bars to Claim of Dower: A Father made a Feoffment to the Use of himself for Life, and afterwards to the Use of his Son and his Wife, for their Lives, for the Jointure of the Wife; this was held to be no Jointure to bar the Wife of her Dower, because it might not commence immediately after the Death of the Husband, for he might die in the Life-time of his Father. So if a Feoffment be made to the Use of the Husband for Life, Remainder to another for Years, Remainder to the Wife for her Jointure; it bars not the Wife of her Dower. *Cro. Jac.* 489. *Hutt.* 51.

But a Feoffment is made in Fee, upon Condition that the Feoffee shall make another Feoffment to the Use of the Son of the Feoffor, and to his the

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Son's Wife in Tail, Remainder to the right Heirs of the Feoffor, which Feoffment is made accordingly; adjudged this is a good Jointure within the Statute, and Bar to the Dower of the Wife. If an Estate be made to the Wife for her Life, upon a Condition, it may bar the Wife, if she accept the same; as a Jointure to a Woman, on Condition to perform the Husband's Will was held good, where the Wife entered and agreed to the Estate: And in Case a Husband devises Land to his Wife, for Life, &c. as a Jointure in Satisfaction of her Dower, and she accepts it after his Death, she will be barred. *Moor* 28. 3 *Rep.* 2. *Bro. Dow.* 69. *Dyer* 220.

If the Husband make a Lease of Lands to his Friends, for a certain Term of Years, in Trust for his Wife and Children, that she shall have 100 l. a Year out of it, or in any such like Manner; by Virtue of this Settlement, she may have the Provision which is no Jointure, and likewise her Dower. And where an Estate is made to a Husband in Tail, with Remainder to the Wife for Life, and Remainder to other Persons: This is not such a Jointure, as with her Acceptance, within the Statute will hinder her from Dower; and here tho' the Husband dies without Issue, it will not help it, but the Wife shall be endowed in his other Lands: But if the Estate were made to the Husband and Wife for their Lives, it would be otherwise. 13 *Jac.* 1. *B. R.* 2 *Shep. Abr.* 74.

A Husband, Tenant in Tail, Remainder to his Wife for Life, makes a Feoffment in Fee to the Use of himself, and his Wife during Life, for her Jointure; it is no Bar to the Dower of the Wife, because it may be avoided by a *Remitter* to her first Estate for Life. If Lands are conveyed to a Woman in Part of her Jointure before Marriage, and

and after Marriage other Lands are granted in full ; in this Case, as she had not at first her full Jointure, she shall take her first Jointure Lands and Dower together. But if a Woman conceals her Jointure commonly made, and brings Dower and recovers it, and then sets up her Jointure, she is barred of the Jointure ; and by bringing Writ of Dower for her Thirds, the Wife waves the Benefit of Entry into Lands, so as to hold them in Jointure. *Moor* 872. 3 *Rep.* 3. *Cro. Eliz.* 128, 137.

The Husband covenanted to stand seised of Lands, to the Use of himself and his Heirs, 'till the Marriage should take Effect ; and afterwards to himself, his Wife, and their Heirs ; and it was adjudged a good Jointure, within the Statute 27 *H. 8.* And a Devise to a Wife for Life, or in Tail, for her Jointure, is good within that Statute : But a Devise to a Wife, for Term of her Life generally, is not good ; though where an Assurance was made to a Woman, and it was not expressed to be made for her Jointure ; it was held it might be averr'd to be made for that Purpose, which Averment is not traversable. *Dyer* 248. 4 *Rep.* 4. *Owen* 33.

A Master, in Consideration of Service done by his Servant, and for divers other Considerations, granted Lands to him, and a Woman he intended to marry, and to the Heirs of their two Bodies to be begotten, creating an Estate-tail ; the Marriage took effect, but this was not a Jointure, for it was not a Gift of the Husband, or any of his Ancestors, but of his Master, and in Consideration of Service, which will not make the Husband such a Purchaser as the Law requires. Yet as to Considerations, in these Cases, if an Estate is settled in Jointure upon a Woman, in Consideration of Money paid, and also of a Marriage to be had ; the

Marriage shall be look'd upon to be the Consideration. *Moor* 683. *Cro. Jac.* 474.

If no Inheritance is reserv'd to the Husband and his Heirs, but the Estate is limited to the Wife for Life, or in Tail, the Remainder to a Stranger; it is not a Jointure; tho' made by the Husband or his Ancestor: Nor is an Estate settled in Jointure, coming from the Ancestors of the Wife, and not of the Purchase of the Husband or his Ancestors, any Jointure within the Statute 11 *Hen. 7. cap.* 20. as to Discontinuances, Alienations, &c. The Father of the intended Wife, in Consideration of Marriage, covenanted to assure Lands to the Husband and Wife, his the Covenantor's Daughter, and the Heirs of her Body, &c. this was adjudg'd no Jointure, within the Meaning of the Stat. 11 *H. 7.* being an Advancement of the Woman by her own Father. And an Estate in Fee-simple conveyed to a Woman for her Jointure, was not any Jointure within that act; which never extended to Lands granted to Women in Fee: But such Estate in Fee conveyed to a Woman for her Jointure, and in Satisfaction of Dower, is a Jointure within the Statute 27 *Hen. 8.* Though an Estate for Life is the usual Jointure. *Cro. Eliz.* 2. 2 *Cro.* 264. 4 *Rep.* 3. 2 *Lill. Abr.* 80.

If a Husband in the Life-time of his first Wife settles Lands to the Use of himself for Life, Remainder to his first and other Sons in Tail, and the Wife dies without Issue; and then he on his second Marriage, in Consideration of a Portion paid, agrees to settle Part of the Lands as a Jointure on his second Wife, the Court of Chancery will set aside the first Settlement, as fraudulent against the Jointress, who is a Purchaser for valuable Consideration. 1 *Chan. Cas.* 100.

A Man and a Woman intending to intermarry, he enter'd into Articles with her before their Marriage, by which he agreed to settle such Lands upon her in Jointure, &c. and in Pursuance of those Articles she marries him; if he dies before any Settlement made, the Widow in Equity shall have the Articles executed, and hold the Lands for her Life, &c. But if a Man, in Consideration of a Marriage-Portion, Articles to settle a Jointure, and dies before the Portion paid, or Settlement made; and the Wife takes out Administration to him, and so becomes intitled to the Money, and then sues the Heir of the Husband to have the Jointure settled, she shall have no Relief; for she is not intitled to the Jointure and Money too: Though it is here said, in Case the Husband had actually received the Portion, and it had been in his Possession, she would have had it as his Administratrix. 2 *Ventr.* 343. 1 *Vern.* 463.

If one gives a voluntary Bond after Marriage, to make a Jointure to his Wife, and accordingly he makes such Jointure, and the Wife delivers up the Bond thereupon, and the Jointure is defeated; the Jointure may be made good out of the Personal Estate, there being no Lands, nor any Creditors: For the Delivery up of the Bond by a Feme Covert, could no Way bind her. In a Covenant that the Woman's Jointure shall be of such a yearly Value, and it falls short; tho' her Estate be not without Impeachment of Waste, yet she may commit Waste, so far as to make up the Defect of the Jointure, and Equity will not prohibit it: And in another Case it was held, that a Provision for a Wife, &c. was not to be consider'd as a voluntary Covenant, and therefore a Deficiency of a Jointure shall be made up, notwithstanding her Neglect in not Requesting it during Coverture; for the

150 **Of Estates in Dower,**

Laches of a Feme cannot be imputed to her.
1 Vern. 427. Mich. 1698. Hill. 1701.

After the Death of the Husband, the Wife may enter into her Jointure, and is not obliged to prosecute a real Action for Recovery of it, as she is to recover Dower by the Common Law: And upon a lawful Eviction of her Jointure, as where the Lands are lawfully recovered from the Husband by a Verdict and Judgment, the Wife shall be endow- ed according to the Rate of her Husband's Lands, whereof she was dowable at Common Law; she shall have Recompence in Value of other Lands of the Heir, for the Term of her Life. And if she be evicted of Part of her Jointure, she shall have Dower for the Whole. *1 Inst. 37. Stat. 27 H. 8. Moor 717.*

But where Estates settled on a Wife, upon Mar- riage, &c. are a Jointure, if the Jointress after the Death of the Husband, makes any Alienation of them by Fine, Feoffment, &c. with another Husband, it is a Forfeiture of the same; but if they are not a Jointure by Law, 'tis otherwise: A Joint- ress within the Statute, may make a Lease for forty Years, &c. if she so long live; and also for her Life, and be no Forfeiture, though she levies a Fine *Sur Conusance de droit, &c.* In other Cases, if she levy a Fine, it is a Forfeiture; and if a Joint- ress within the Statute *11 H. 7.* suffer a Recovery covinously to bar the Heir, he may enter presently. A Wife's Jointure shall not be forfeited by the Treason of the Husband; as in Case of Dower: But Feme Coverts committing Treason or Felony, may incur Forfeiture of their Jointures; and being convict of Recusancy, they forfeit two Parts in Three of their Jointures and Dower by Statute. *Cro. Jac. 688. 3 Rep. 50. 2 Leon. 206. 2 Nels. Abr. 1040. 5 Ed. 6. 3 Jac. 1. cap. 4.*

Marriage

Marriage Settlements or Jointures commonly are made of the Estate of the Husband, &c. to the Husband for Life, after his Decease to the Wife for Life for her Jointure, and to their Children or Issue in Remainder, with Limitations to Trustees to support contingent Uses, and Terms granted to the Trustees to raise Daughters Portions, &c. And they are made several Ways, viz. by Lease and Release, Fine and Recovery, Covenant to stand seised to Uses, &c. And these Settlements the Law is ever careful to preserve, especially that Part of them which relates to the Wife; of which she may not be divested, but by her own Fine, unless she otherwise cause a Forfeiture thereof by committing of Crimes, in the Cases before-mentioned.

And if a Woman about to marry, to prevent her Husband's Disposal of her Lands, conveys the same to Friends in Trust, and they with the Husband after Marriage make Sale of the Lands, the Court of Chancery will decree the Purchaser to reconvey to her. And where a Man in mean Circumstances, had married a Woman of considerable Fortune, upon Suggestion by the Friends of the Wife of Lunacy, &c. though the Woman was in Court and thought sensible enough, her Friends moved that her Estate might be so settled, that she might not be wrought on by the Husband to give it from her Children by him, or which she might have by any other Husband, which the Court thought fit to order: And in this Case, a Precedent was remembered, that the Settlement was to be to the Husband and Wife, and the longer Liver of them; then to the Issue between them, &c. with a Power in Case of Failure of Issue, for the Wife to dispose. *Tothil 43. Skinn. 110.*

152 Of the Estate by the Curtesy.

Besides Dower and Jointure of the Husband's Lands, the Wife surviving her Husband is intitled to all her Chattels real, as Terms for Years, &c. and Bonds again, unless the Husband hath alter'd the Property thereof in this Life-time. If a Bond be given by the Husband to the Wife before Marriage, to leave her worth so much at his Death, it is good: And on mutual Promises of Marriage in Writing, if either Party refuses, Action lies for Damages. 2 *Sid.* 58. 2 *Ventr.* 361. 1 *Salk.* 24.

The Tenant by the Curtesy of England is,

WHere a Man taketh a Wife seised in Fee-simple, or Fee-tail general, or as Heiress in special Tail, and hath Issue by her, Male or Female, born alive, which by any Possibility may inherit the Estate, and the Wife dies; the Husband shall hold the Lands during his Life, and is called Tenant by the Curtesy of *England*, because this Privilege is not allowed in any other Country. 1 *Inst.* 29.

And in divers Cases it is said a Man shall be Tenant by the Curtesy, where a Woman shall not be endowed: If Lands are given to two Women, and to the Heirs of their two Bodies begotten, and one of them takes Husband, and hath Issue, and dieth, the Inheritances being several, the Husband shall be Tenant by the Curtesy; but certain it is, if Land be given to two Men, and the Heirs of their two Bodies, and one taketh Wife and dieth, she shall not have Dower. Also a Man shall be Tenant by

Of the Estate by the Curtesy. 153

by the Curtesy of a Castle, which serves for the publick Defence of the Realm; tho' a Woman shall not be endowed thereof: And one may be Tenant by the Curtesy of Common *sans Number*, when a Woman cannot have Dower thereof. 1 Co. Inst. 30.

To give Tenancy by the Curtesy, four Things are requisite, *viz.* Marriage; Seisin of the Wife; Issue, and Death of the Wife. As to Seisin in this Case, it is intended a Seisin in Deed, if it may be attain'd unto: As if a Man dieth seised of Lands in Fee-simple, or Fee-tail general, and they descend to his Daughter, and she takes a Husband and hath Issue, and dies before any Entry, the Husband shall not be Tenant by the Curtesy; and yet he had a Seisin in Law: But if she or her Husband had during her Life enter'd, he would have been Tenant by the Curtesy. And where a Person seised of an Advowson, or Rent in Fee, hath a Daughter, who is married, and has Issue, and dies seised; if the Wife, before the Church become void, or the Rent becomes due, dieth, here she hath but a Seisin in Law, yet the Husband shall be Tenant by the Curtesy; for no other Seisin could be obtained. Though a Man shall not be Tenant by the Curtesy of a bare Right, Title, Use, or of a Reversion or Remainder expectant upon any Estate of Freehold, unless the particular Estate be determined during the Coverture. 1 Inst. 29. Dyer 9. F. N. B. 149.

If a Woman Tenant in Tail general, takes a Husband, and hath Issue, the Issue dies, and the Wife dies without any other Issue, the Husband shall be Tenant by the Curtesy, altho' the Estate in Tail be determined; because he was intituled by Law before the Estate-tail was spent, and for that the Land remains, and his Estate is not deriv'd
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154 Of the Estate by the Curtesy.

merely out of that of the Wife, but is a Benefit of Law tacitly annexed to the Gift. So if a Man be seised in Fee-simple of a Rent, and makes a Gift in Tail general to a Woman, who marries, and hath Issue, which dies, then the Wife dies without Issue, the Husband shall be Tenant by the Curtesy of the Rent, because the Rent remaineth: But where a Gift in Tail is first made, reserving Rent to a Woman and her Heirs; and the Wife dies without leaving Issue, her Husband shall not be Tenant by the Curtesy of this Rent; for the Rent being newly reserved, is by the Act of God determin'd, and no Estate thereof remains. If an Estate of Freehold in Rents, Commons, or such like be suspended, a Man shall not be Tenant by the Curtesy; but if the Suspension be but for Years, he shall. 1 *Inst.* 30. 8 *Rep.* 36. *Plowd.* 155.

A Feoffment was made to the Use of a Woman in Tail, upon Condition of Paying a certain Sum of Money to another, within a Time limited, and on Default of Payment of the said Sum, then to such other Person in Tail, &c. In this Case it was adjudged, that by the Non-payment of the Money the Estate-tail was determined, and where ever such an Estate is determin'd, and not defeated, the Husband is Tenant by the Curtesy. In a Case where a Rent-charge was granted to a Feme Sole in Fee, to be paid after the Death of another Person, and she married and had Issue; the Court inclined, that the Husband was Tenant by the Curtesy, because tho' the Rent was payable *in futuro*, yet it was assignable, and might be granted over, which proves that it was *in esse*. 1 *And.* 184. 1 *Leon.* 167. 2 *Sid.* 110, 117.

The Issue, which shall intitle a Man to be Tenant by the Curtesy, must be born in the Life of the Wife,

Of the Estate by the Curtesy. 155

Wife, and born alive, which may be proved by Motion, Stirring, &c. And being born alive, 'tis sufficient, without crying; for perhaps it may be born Dumb, and if the Issue is deaf, or dumb, or both, or be an Ideot, and is not a Monster, it is lawful Issue to make the Husband Tenant by the Curtesy, and to inherit the Land. If a Child is born alive, it is not material whether it is baptised, or ever heard to cry, to make the Husband Tenant by the Curtesy: But if the Child is ripp'd out of the Mother's Body after her Death, tho' it be alive, it will not intitle Tenancy by the Curtesy; for this ought to begin by the Issue, and be consummate by the Death of the Wife, and the Estate of Tenant by the Curtesy should avoid the immediate Discent. And as the Child must be such as by Possibility may inherit; therefore if Land be given to a Woman and the Heirs Male of her Body, and she takes Husband, and hath Issue a Daughter, and dies; this Issue cannot possibly inherit, so that the Husband shall not be Tenant by the Curtesy. 1 *Inst.* 29. *Terms de Ley* 206. 1 *Nels. Abr.* 578.

It is not requisite that the Issue be born and alive when the Land descends or comes to the Woman: For if a Man marries a Woman seised of Lands in Fee, and is disseised of the Lands, and then hath Issue, and the Wife dies, he shall enter and hold by the Curtesy: So if he hath Issue, which die before the Lands descend to the Wife. And altho' the Estate of Tenant by the Curtesy be not consummate till the Wife's Death, yet it hath such a Beginning after Issue had in the Life of the Wife as is respected in Law: For if he make a Feoffment in Fee, and the Wife dieth, the Feoffee shall hold during his Life; and such Feoffment cannot be a Forfeiture, because the Feoffor had an
Estate

156 Of the Estate by the Curtesy.

Estate of Tenant by the Curtesy initiate, and was seised of the Inheritance. 1 *Inst.* 29, 30.

But if a Man intitled to be Tenant by the Curtesy, makes a Feoffment in Fee upon Condition, and he enters for Breach of the Condition, and then his Wife dies, he shall not in this Case be Tenant by the Curtesy; because his Tenancy by the Curtesy was extinct by the Feoffment; as when the Lord disseises his Tenant, and makes such a Feoffment, this is a Release in Law, and shall extinguish the Seigniorship as much as a Release in Deed, and the Re-entry shall not revive it, for the Condition is annexed to the Feoffment, and not to the Release. And where a Man seised of Land in the Right of his Wife, maketh a Feoffment in Fee, and the Estate is then made back to the Wife; she is thereby remitted, and yet he shall never be Tenant by the Curtesy of the Land. *Ibid.* *Hob.* 338.

If a Woman takes Husband, and hath Issue, and Lands descend to the Wife, the Husband enters, and after the Wife is found an Idiot by Office, the Lands shall be seised by the King; for the Title of the Tenancy by the Curtesy and of the King begin at one Instant, and therefore the Title of the King shall be preferred: But this is made a Question by some Authors, because the Fee and Freehold were in the Wife, and the Wife of an Idiot shall have Dower; therefore after the Wife's Death, the Husband should be Tenant by the Curtesy. 1 *Inst.* 30. *Hawkins's Abr.* 43.

A Man marries a Woman seised of Lands in Fee, and hath Issue, and after the Wife is attainted of Felony, so that the Issue cannot inherit to her, yet he shall be Tenant by the Curtesy, in regard to the Issue which he had before the Felony, and which by Possibility might then have inherited:
But

Of the Estate by the Curtesy. 157

But if the Wife had been attainted of Felony, before the Issue had, altho' he hath Issue afterwards, he shall not be Tenant by the Curtesy in such Case.

1 *Inst.* 40.

It has been held, that a Tenant by the Curtesy cannot claim by a Devise, and wave his Estate of Tenancy by the Curtesy; because, as 'tis held, the Freehold commenced in him, before the Devise for Term of his Life. A Man, being seised in Fee of a House in *London*, devised it by Will to *A.* his Cousin, a Widow, and after her Decease to *R. S.* her Son and Heir apparent, and died; *A.* married a second Husband, and had Issue by him, and afterwards she died; it was adjudged, that her Husband could not be Tenant by the Curtesy, because his Wife was only Tenant for Life. *Dyer* 357.

A Person devised Lands to his Sister for her Life, and if she married and had Issue Male of her Body living at the Time of her Death, then to such Issue Male and his Heirs for ever; but if she died leaving no Issue Male, then the same to remain over to another: She married, and had Issue a Son, who afterwards died, and then she died; but it was decreed the Husband should not be Tenant by the Curtesy, for the Inheritance was never vested in the Wife during her Life, and her Estate being only to support the contingent Estate-tail to her Issue, &c. 2 *Mod. Caf. L. and E.* 147, 150.

By the two last mentioned Cases it appears, how Tenancy by the Curtesy may be prevented, by creating an Estate for Life in the Wife; and as the like Estate in a Husband prevents Dower, so does the making a Jointenancy in the Lands, &c.

*Of Estates of Tenants in Common,
and of Jointenants.*

TENANTS in Common are such as hold Lands in Fee, for Life or Years, by several Titles, or by one Title and several Rights; and they have the Possession or Occupation of the Lands in Common, but several Estates. *Litt. 292.*

The essential Difference between Jointenants and Tenants in Common, is that Jointenants have the Lands by one joint Title, and in one Right, and Tenants in Common by several Titles or Rights; for which Reason Jointenants have one joint Freehold, and Tenants in Common have divers Freeholds, only this Property is common to them both, that their Occupation is undivided, and neither of them knoweth his Part in several: For Tenants in Common know not their own Parts, but take the Profits in Common. If one Jointenant dies, his whole Interest shall survive to the others: But the Estates of Tenants in Common, shall descend to their Issue, &c. So that their Heirs and Executors shall have their Parts and Shares, and not the Survivors, as in Case of Jointenants. *1 Inst. 189, 181.*

If Lands are given or granted to two Persons, to hold the one Moiety thereof to one and his Heirs, and the other Moiety to the other and his Heirs, they are Tenants in Common: And the *Habendum* may sever the Premises or Parties in a Deed, as when Land is granted to Two, to hold to one for Life, Remainder to the other for Life. And in the first Case of Land given to Two, *Habend.* to them

them by Moieties, the Substance of the Premisses is not alter'd; for both of them have the Whole in Use and Common, as they should have it by the Premisses jointly, which is but a Point of Quality alter'd: But if it were twenty Acres to Two, (in particular) to hold ten Acres to one, and ten to another, it would be void and repugnant. A Man seised in Fee of Lands, infeoffs another of a Moiety, or Third, or Fourth Part of the same Land, without any Assignment or Limitation of it in Severalty, at the Time of the Feoffment, in such Case the Feoffee and Feoffor are Tenants in Common. *Litt. Sect.* 298, 299. *Cro. Car.* 75. 2 *Cro.* 564. *Hob.* 172.

A Gift is made of Lands to two Men, and the Heirs of their two Bodies, the Donees have a joint Estate for Term of their Lives; and if each of them hath Issue and die, their Issues shall hold in Common, &c. But if Lands be given to two Bishops or Parsons, and their Successors, they are Tenants in Common at first, and have no joint Estate for Life; for they take in their Politick Capacities in Right of their Churches. In case a Lease is granted to a Bishop and a Layman, they are not Tenants in Common but Jointenants, because they both take it in their natural Capacities: And yet where Lands are given to a Layman and a Parson, and to the Heirs of one of them, and Successors of the other, they are Tenants in Common, by Reason the Fee vests in them in several Capacities. 1 *Inst.* 189, 190. *Plowd.* 239. 2 *Roll.* 91.

Tenants in Common may be by Title of Prescription; as if one and his Ancestors, or they whose Estate in Fee he hath in one Moiety of the Lands, have holden in Common the same Moiety with the other Tenant who hath the other Moiety, and with his Ancestors, or them whose Estate he hath

160 Of Estates held in Common,

hath undivided, Time out of Mind. Of this there is good Authority in Law; but Jointenants cannot be by Prescription, because there is Survivorship between them, but not between Tenants in Common. *Litt.* 316. 1 *Inst.* 195. *F. N. B.* 125.

If a Man covenants to stand seised to the Use of *A.* for Life, and after to two others, equally to be divided, and to their Heirs and Assigns for ever, the Inheritance shall be in Common, as well as the Estate to the Two for Life. And where a Man devises Lands to his two Sons, and their Heirs for ever, and the longer Liver of them, to be equally divided between them after his Wife's Death, this shall be a Tenancy in Common in the Sons. But it has been held, that there is a Difference between Words which create a Tenancy in Common in a Will, and in a Conveyance; and tho' the Words *equally to be divided* in a Will, make such Tenancy, it is by Way of Construction, and by the Intent of the Testator, that there should be no Survivorship: And it is said that there are but two Ways of creating a Tenancy in Common by Conveyance, *viz.* either by limiting it to them expressly as Tenants in Common, or else by limiting a Moiety, or a Third, or other undivided Part to one; and the other Moiety or Third, to another, &c. For if it be otherwise, tho' the Words *equally divided* are used; yet they shall signify only an equal Division, and Proportion of the Profits. 2 *Ventr.* 365. 3 *Lev.* 373. *Mich.* 1730.

According to the Opinion of the Lord Ch. Just. Holt, The Words *equally to be divided* cannot make a Tenancy in Common in a Deed, tho' they may in a Will: And where a Surrender was made of Lands to three Persons and their Heirs, equally to be divided between them and their Heirs respectively;

ſpectively; he held it a Jointenancy, and that the Word *equally*, imported no more than to have alike; and as to the Word *divided*, he was of Opinion, that did not import a Tenancy in Common, for their Poſſeſſion muſt be intire, and to divide would be to deſtroy it. And the Law loves not Fractions of Eſtates, nor to multiply Tenures; whilſt the Eſtate continues in Jointenancy, there is no Alteration of the Tenure; but if you turn it into a Tenancy in Common, all the intire Services are multiplied. In this laſt Caſe, two Judges held it to be a Tenancy in Common, and ſo it was adjudged; but the Judgment is ſaid to be reverſed. 1 *Salk.* 390, 391.

A Deviſe to three, Share and Share alike, without the Words *equally to be divided*, makes a Tenancy in Common: If a Man deviſes Lands to his five Sons and their Heirs and Aſſigns, all of them to have Part and Part alike, the one as much as the other; they are Tenants in Common. In a Deviſe to two, equally to be divided between them, two Juſtices ruled they were Tenants in Common; but one Juſtice ſaid they are Jointenants, becauſe the Words refer to a Diviſion to be made, and in the mean Time they were Jointenants: There are ſeveral Inſtances of great Diverſity of Opinion. *Litt. Rep.* 46. *Dal.* 90. 2 *Lill. Abr.* 560.

A Man deviſed Lands by Will to his two Sons equally, and their Heirs: It was agreed in this Caſe, that the Word *equally*, hath two Significations; in the one it refers to the Eſtate, in the other to the Quantity of the Land: If a Man deviſe his Goods equally to two, there is not any Jointenancy, becauſe an equal Benefit is intended to either of them, which cannot be if all muſt ſurvive to one: So of a Deviſe of a Term for Years to two equally, they are Tenants in Common; for

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162 Of Estates held in Common,

otherwise there would not be an Equality in Property, if it should all go to the Survivor. But a Devise of Lands to two equally, will make them Jointenants; because there is not any Inequality or Loss, altho' the Survivor should have all, as the other can have it but during his Life: But if a Devise be of Land to two and their Heirs equally, there is a Tenancy in common; for every one of their Heirs shall have it, and if one should have all by the Survivorship, it is not equal, as to their Heirs. And so here they are Tenants in Common; which was adjudged accordingly. *Cro. Eliz.* 695, 696.

This was the Reasoning and Judgment of *Popham* Ch. Just. But it was held by *Fenner*, that they were Jointenants; for that Jointenants have an equal Estate, and equal Profit: And a Will ought to be expounded after the Judgment of the Common Law, when the Intent appears not to the contrary: And therefore a Devise to one and his Wife, and to another Person equally, they are Jointenants as by Purchase, during the Coverture, and the Baron and Feme have but a Moiety, &c. If it had been to two, equally to be divided, it might have made a Tenancy in Common. *Ibid.* 2 *And.* 17.

A Feoffment was made of Land to Trustees, in Trust for the Feoffor during Life, and afterwards to pay the Profits to *A. B.* and *C.* in a ratable and equal Manner; and in like Manner to convey the Inheritance to them and their Heirs, when they should come to the Age of Twenty-one Years: Here it was decreed by *Bridgman* Lord Keeper, assisted by two Judges, that it was a Tenancy in Common; and that as well for the Inheritance, as for the Profits, and also in a Deed of Trust, as in a Will; in both which the Intent is to be considered,
and

and by Jointenants. 163

and the Inheritance here was to be convey'd in like Sort as the Profits, and that was in a ratable and equal Manner, which in a Will would make them Tenants in Common. 1 *Lev.* 232.

One having a Mortgage for Years made his Will, and thereby devised all his Personal Estate, of what Nature soever, to his Executors in Trust, for the Payment of his Debts, and after devised the Residue and Overplus of his said Personal Estate to his two Daughters, equally to be divided between them, and died; the Debts being satisfied, the Daughters contracted with the Mortgagor for the Purchase of the Equity of Redemption to them and their Heirs: And it was held, that this Purchase of the Equity of Redemption and Inheritance was a Tenancy in Common, the Mortgage devised to the two Daughters being so, and this Purchase being founded on the said Mortgage. *Pasch.* 11 *Ann.*

A Woman devised a Term for Years to her two Daughters, they paying yearly to her Son 25 *l.* by quarterly Payments, *viz.* each of them 12 *l.* 10 *s.* yearly, out of the Rents of the Premisses, during his Life, if the Term so long continued; and my Lord Chancellor held it clearly to be a Tenancy in Common, the 25 *l.* being to be paid by the two Daughters equally in Moieties. The Sum of 100 *l.* was given by Will to several Children, equally to be divided between them, and the Survivors and Survivor of them; and if one died before Marriage, her Share to go over to another Person; it was adjudged they took this 100 *l.* as Tenants in Common, notwithstanding the Words, *Survivors of them*; for as the Devise was to all, they must all take alike, and not one be Tenant in Common, and the others Jointenants. 1 *Vern.* 353. *Abr. Cas. in Eq.* 292, 293.

164 Of Estates held in Common,

If two Tenants in Common of Lands in Fee, grant a Rent of 20 s. a Year out of their Land, the Grantee shall have two Rents of 20 s. for every Man's Grant shall be taken most strongly against himself, and in respect of their several Interests, it shall be here construed as several Grants in Law. But if they make a Gift in Tail, or Lease for Life, &c. reserving 20 s. Rent to them and their Heirs, they shall have but one Rent of 20 s. for they shall have no more than themselves reserved; and the Donee or Lessee shall pay but 20 s. according to their own express Reservation: And yet where the Reservation of Rents severable, is in joint Words, in Regard to the several Reversions, the Law makes thereof a Severance. 1 Co. Inst. 197. 5 Rep. 7. Plowd. 289.

Where Tenants in Common make a Lease for Years rendring Rent, they shall join in an Action of Debt for the Rent, for that is grounded on the Contract which is Personal, and their Actions Personal are joint and shall survive; but shall sever in Avowry, for the Distress is made in respect of the Reversion which is common. And it is observed, that where Damages are to be recover'd for a Wrong done to Tenants in Common or Parceners, on a Personal Action, and one of them die, the Survivor shall have the Action; for altho' the Estate or Property be several between them, the Personal Action is joint and may be in all their Names. 1 Inst. 198. Cro. Jac. 231. Sid. 157.

Tenants in Common of a Term cannot join in an Action of Ejectment, because it concerns the Right and Realty which is several; for in real Actions, and Actions that are mix'd with the Personalty, Tenants in Common shall sever in Action, as they have several Freeholds: And as they shall be severally by others impleaded, so they shall severally

verally implead others in all real and mix'd Actions, unless it be in Case of Necessity for a Thing intire. In real Actions Tenants in Common always sever; but in Trespasses *quare Clausum fregit*, and in Personal Actions, they always join, and it would be unreasonable to bring several Actions for one single Trespass: And if a Tenant in Common bring an Action of Trespass against a Stranger alone, his Action shall be abated by pleading him Tenant in Common with another. 1 *Inst.* 195, 199. *Hob.* 120. 3 *Mod.* 251.

If two Persons are possessed in Common of a Term for Years of Land, or any other severable real Chattel, and one eject the other by driving off his Cattle, or not suffering him to occupy the Land; the other shall have Ejectment and recover Damages against him for the Entry, but not for the mean Profits: In case one of them only takes the whole Profits, he does not eject the other thereby, nor can the other have Trespass against him, for each of them may occupy the Whole; the Entry of one serves for all, and a Tenant in Common or Jointenant, can never be disseised by his Fellow or Companion, but by an actual *Ouster*. Two being possess'd of a Chattel Personal, or an intire real Chattel in Common; if one of them take all out of the other's Possession, the other hath no Remedy by Action, but he may take them again, when he sees his Time. 1 *Inst.* 199. *Plowd.* 247. *Noy* 14.

In Case there be two Tenants in Common of a Park, or Dove-house, and one of them destroy all the Deer, or take all the old Doves and destroy the Flight; or if two have Land and Meer-Stones in Common, and one of them carry them away; or where they have a Folding for Sheep in Common, if one disturb the other to erect Hurdles, in all

166 Of Estates held in Common,

these Cases Trespafs lies: And if two several Owners of Houses have a River in Common, and one of them corrupts it, the other shall have an Action of the Case; also if there be two Tenants in Common of a Wood, Turbary, Piscary, &c. and one do Waste, the other shall have his Writ of Waste. And where one Tenant in Common is willing to repair a House, and the other will not, he may bring a Writ *de Domo Reparanda* against him. 1 *Inst.* 200.

One Tenant in Common may infeoff the other, but cannot Release to him, for their Estates are as distinct and several as if they were severally seised of several Lands: One Jointenant cannot infeoff the other, for one has no Freehold distinct from that of his Companion; but one may Release to the other, and by such Release the Whole shall vest in the Releasee, for they both claim by the joint Words of the same Conveyance; which Words, if they are void, or cease as to one, are sufficient to vest the Whole in the other. A Grant, Bargain and Sale, may enure as a Release, but must be so pleaded; and a Jointenant may Lease to his Companion. *Hawk. Abr. Co.* 284. 1 *Ventr.* 78. 2 *Cro.* 649. 3 *Salk.* 205.

Jointenants are so called, not only because Lands are convey'd to them jointly by one and the same Title; but for that they take by Purchase only, and not by Discent, as in Case of Coparceners: And yet like them, they must jointly plead, and be jointly sued and impleaded; but they have a sole and peculiar Quality of Survivorship, which the others have not. 1 *Inst.* 180.

Where a Man seised of Lands or Tenements, &c. makes a Feoffment to two or more, and their Heirs; or makes a Lease to them for Term of their Lives, and they enter: And if a Rent be granted to A.
and

and *B. Habendum* to *A.* till he be married, and to *B.* till he is promoted, &c. In this Case they are Jointenants, tho' the Limitations are several; and the Rent shall survive by the Death of either of them, if his Moiety were not determined before his Death by Marriage, or Promotion. If two or more have a joint Estate in Lands in Possession, and in a Chattel Real or Personal; or a joint Estate in a Debt, Duty, Covenant, Contract, &c. it is a Jointenancy, and the Part of him that dies goeth not to his Heir or Executor, but the Whole to the Survivors or Survivor, and to their Heirs, &c. But if two Merchants Trade with a joint Stock, and one of them die, his Share in the Stock and Debts shall go to his Executor, and not the Survivor. *Litt. Sect.* 277. 1 *Inst.* 180, 181. 2 *Roll.* 89. 2 *Cro.* 166.

Lands are given to two, and to the Heirs of one of them, they are Jointenants for Life, and one has a Freehold, and the other a Fee-simple; and if he that hath the Fee dieth, and then the other and a Stranger enter, the Heir of him that had the Fee may either have a Writ of *Mortdancestor* or of Right, or he may bring a Writ of Intrusion; or if the Conveyance were by Fine, there may be a *Scire facias* to execute it; but in the Writ of Right, &c. the Fee is supposed to be executed. If a Gift be made to two Men, and the Heirs of their two Bodies begotten, the Remainder to them two and their Heirs, here they are Jointenants for Life, Tenants in Common of the Estate-tail, and Jointenants of the Fee-simple in Remainder, for they are joint Purchasers of the Fee: And the Cause why the Inheritances in these Cases do not drown the Estates for Life, is for that they are all made by one Conveyance, and by the expresse Purport of the Deed a joint Estate is given to the Parties for their Lives; and where the Inheritance,

168 Of Estates held in Common,

and the particular Estate, are divided in several Conveyances, the one drowns the other. 1 *Inst.* 183, 184.

If a Lease is made to two Persons for Term of their Lives, and after the Lessor granteth the Reversion to them two, and the Heirs of their two Bodies, they are not Jointenants, but Tenants in Common in Possession; and yet it is implied, that there is no Division between the Estate for Lives, and the several Inheritances, for in this Case they cannot convey away the Inheritances after their Decease, because it is divided only in Supposition and Consideration of Law, and the Inheritance is said to be executed to some Purposes. And if a Man make a Lease for Life, and grant the Reversion to two in Fee, then the Lessee grants his Estate to one of them, here they are not Jointenants of the Reversion; for there is an Execution of the Estate for one Moiety, and an Estate for Life, the Reversion to the other, of the other Moiety. But as upon one joint Gift or Lease, there is one joint Reversion, and upon several Gifts there are several Reversions; altho' the Gifts or Leases are several, if the Donors or Lessors grant the Reversion generally to two or more Persons and their Heirs, they are Jointenants of the Reversion. 1 *Inst.* 182, 183. *Cro. Car.* 320. 2 *Co.* 61.

A Devise by Will to two jointly and severally, is a Jointenancy, notwithstanding the Word *severally*, because it is coupled with the Word *jointly*. If a Father make a Deed of Bargain and Sale of Land to his Son, To hold to him and his Heirs, &c. to the Use of the Father and Son, and their Heirs and Assigns for ever, they are Jointenants: And in Case the Father devises Lands to his eldest and other Sons, they will be Jointenants, and not Tenants in Common. Where a Man having only
two

two Daughters, who were his Heirs, devised his Lands to them and their Heirs; it was held, they should have it as Jointenants, for the Devise gives it to them in another Degree and Manner than the Common Law would have given it to them, and for the Benefit of the Survivorship between them. And one devised Lands to his Wife for Life, and after her Death to his three Daughters, and the Heirs Male of their Bodies, &c. The Wife and two eldest Daughters died; and it was adjudged, that the surviving Daughter should have the Whole for her Life; the three Sisters being Jointenants for Life, and several Tenants in Tail of the Inheritance. *Popb.* 52. *2 Cro.* 83. *Cro. Eliz.* 431. *Lee* 47.

And where there are two Jointenants for Life, each of them hath an Estate for his own Life, and for the Life of his Companion; and therefore if one of them make a Lease, it shall continue not only during the Life of the Lessor, but after his Death, during the Life of his Companion; for this Lease, which is only derivative, shall continue as long as the original Estate out of which it was derived. But this is contrary to another Resolution, where it was held, that such a Jointenant hath only an Estate for his own Life, and a Possibility of surviving his Companion to be intitled to his Part; so that if he grant over his Estate, that Possibility is gone, and if he die, the Estate of the Grantee shall revert to him in the Reversion. *1 Roll.* 441. *Jones* 55. *2 Salk.* 204, 205. See after *Severance*.

If an Estate be made to Husband and Wife, and a third Person, and their Heirs, he takes one Moiety, and the Husband and Wife another, for they are but one Person in Law; therefore there are no Moieties in Law of a joint Estate made to them both during the Coverture: But if an Estate
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170 Of Estates held in Common,

be made to a Man and a Woman and their Heirs before Marriage, and after they marry, the Husband and Wife have Moieties between them; and if a Man and Woman have a joint Term for Years, after their Marriage the Jointenancy continues. If a Lease be made to a Man and his Wife, To hold one Moiety to him for Life, the other to her for Life, and then the Lessor confirms the Estate of both, *Habendum* to them and their Heirs; this gives them a joint Fee in the Wife's Moiety, and the Husband a sole Fee in his own. The Confirmation of the Estate of one Jointenant, enures to both of them: And where a Man Releases to one joint Fcoffee, it shall enure to him and all his Companions, in respect to the Warranty which the Law presumes they have. *Litt.* 291. *Dyer* 31, 32. 1 *Inst.* 187, 299, 297, and 276.

But where there are two Jointenants of an Estate in Fee, and one of them grants a Rent-charge, Common, or the like, out of his Part, or a Way over the Land, and die, the Survivor shall hold the Land discharged, for he claimeth not any Thing from his Companion, &c. And so it is if a Man be possessed of Lands for Term of Years in Right of his Wife, and grants a Rent out of it, and dies, the Wife shall avoid the Charge; but if the Husband had survived, the Charge is good during the Term. If one Jointenant acknowledge a Recognizance or Statute, or suffer Judgment in an Action of Debt, &c. and dies before Execution had, it shall not be executed after his Death: But in Case Execution be sued in the Life of the Conusor, it shall bind the Survivor. And Judgment being had in Debt against one Jointenant for Life, who before Execution released to his Companion; it was adjudged, that the Moiety was still liable to the Judgment during the Life of the Relessor; tho' if

if he had died before the Execution, the Survivor should have had the Lands discharged of the Debt and Judgment. 1 *Inst.* 184. *Plowd.* 418. 6 *Rep.* 78.

If a Jointenant in Fee-simple is indebted to the King, and dies, it is said the Lands cannot be extended in the Hands of the Survivor: But if Husband and Wife purchase a Term jointly, and the Husband is indebted to the King, and dies; in such Case the Term shall be subject to the Debt, because the Husband might have disposed of the whole Estate. A Husband and his Wife were Jointenants, and Action was brought against the Husband, without naming the Wife, and he made Default; thereupon the Wife prayed to be received for her Right, but it was not allowed, by Reason she was not Party to the Writ; but he in Reversion may be received, and plead Jointenancy in Abatement. *Plowd.* 321. *Moor* 242.

A Jointenant in Fee makes a Lease for Years of the Land, to begin presently or *in futuro*, or of the Herbage, and dies, it cannot be avoided by the Survivor, because the Lessee has an Interest in the Land itself vested in him, and a Right to enjoy the Possession thereof by Force of the Lease. But where a Jointenant makes such Lease to commence on a Condition precedent, if he die before it be perform'd, the Survivor is not bound by it: And if a Jointenant in Fee take a Lease for Years of his Moiety, the Survivor shall not be estopped or concluded thereby; but he shall be bound by a Recovery had against the other, as the Right is bound by it. The Reason in these Cases is, because the Survivor claims not from his Companion, but from the Feoffor, and may plead the Feoffment to himself without mentioning the other joint Feoffee; and here if such Jointenant makes a Lease
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172 Of Estates held in Common,

for Years, reserving a Rent, and dies, tho' the surviving Feoffee shall have the Reversion, the Rent shall go to the Executors of the Party dying, and not to the Survivor, because he claims from the first Feoffor which is Paramount or above the Rent. 1 *Inst.* 185. *Dyer* 187. 1 *Rep.* 96.

If there be two Jointenants in Fee, and one Jointenant grants a Rent, and after makes a Release to his joint Companion and dies, the Grant remains good, and the other shall hold the Land charged; for now he claims not by Survivorship, the Release having prevented the same: And there is no Question where there are three Jointenants, and one of them grants a Rent-charge, and then releases to one of his Companions only and his Heirs, and dies, but that the Charge is good for ever; because the Releasee cannot claim from the Feoffor, as he hath a joint Companion at the Time of the Release made, and he claims only from the Releasee. And altho' the Release of one Jointenant to the Rest of his Companions, makes no Degree in Law, neither is there any several Estate between them, but the Estate of him that releaseth is as it were extinguish'd, yet shall they hold the Land charged as aforesaid: As if Tenant for Life grant a Rent-charge, and after surrenders his Estate to the Lessor, notwithstanding the Estate charged is gone, and the Lessor claims not by him, here he shall hold it charged. 1 *Inst.* 185. 2 *Cro.* 696.

A Jointenant as to the Possession of Lands in Jointure is seised by every Parcel, and in every Parcel thereof, and in the whole jointly with his Companion; and the Possession of one Jointenant, is the Possession of the other; but as to the Right of the Land, Jointenants are seised only of Moieties, and therefore if one grant the Whole, a Moiety only passeth. In the Nature of Jointenancy,
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the Jointenants cannot singly dispose of more than the Part that belongs to them; where they join in a Feoffment, in Judgment of Law each of them gives but his respective Part; and so it is of a Gift in Tail or Lease for Life, &c. And for a Condition broken, they shall only enter on a Moiety of the Lands. And tho' every Jointenant has a Right to his own Share, to several Purposes, as to give, lease, forfeit, &c. A Devise of Land whereof a Man is jointly seised or possessed, is void; for the Will taketh not effect 'till after the Death of the Devisor, and the Title of the Survivor cometh by his Death, and is paramount that of the Devisee, tho' they meet in an Instant. 3 Cro. 809. 1 Inst. 186. Litt. 287.

In Case there are three Jointenants, and one aliens his Part to a Stranger, the other Two are Jointenants of their Parts that remain, and hold them in Common with the Alienee; for as to the Alienee they then claim by several Titles, and the Jointure is severed, so that there can be no Survivorship: And if Jointenants make several Feoffments, or Gifts in Tail, or Leases for Life; the Feoffees, Donees, or Lessees, are Tenants in Common. If where there be three Jointenants, one releaseth by Deed to one of his Companions, all the Right he hath in the Land, then he to whom the Release is made, hath the third Part of the Lands by Force of the Release; and he and his Companion shall hold the other two Parts jointly; but as to the third Part which he hath by the Release, he holdeth that himself with his Companion in Common. 1 Inst. 189. Hawk. Abr. 275.

If one Jointenant make a Lease for his own Life and die, there shall be no Survivor, because at the Time of his Death the Jointure is severed; and notwithstanding the Act of any one of the Jointenants,
there

174 Of Estates held in Common,

there ought to be equal Benefit on both Sides, and in this Case, if the other Jointenant had first died, there could have been no Benefit of Survivorship. After the Jointure has been severed by the Lease of one Jointenant, if Lessee for Years die in the Life of both the Jointenants, they become Jointenants again; but if either of them die before the Lessee, and his Part descends to his Issue, &c. the Jointure is gone for ever. 1 *Inst.* 193.

There are two joint Lessees for Life, and one grants all his Part to another Person; the Grantee and the other Lessee are Tenants in Common as long as both Lessees are alive, and the Lessor shall enter into a Moiety of the Land on the Death of either of them, because by such Grant the Jointure was sever'd: And it is said to make no Difference, if the joint Lease were made by the Words, *To hold to them Two for their Lives, and to the Survivor.* By making such Lease, a Jointenant severs the Jointure for these Reasons; because the Freehold is thereby sever'd from the Jointure, and consequently the Reversion depending on the Freehold is severed also: And if there be two Jointenants for Years, and one of them lease his Part for Years, but for a short Term only, the Jointure is severed; for the Lease for Years in Possession in one, cannot stand in Jointure with the Reversion in the other, expectant on such Lease for Years. A Freehold cannot stand in Jointure with a Lease for Years; nor a Freehold and Inheritance in Possession, with a Reversion expectant upon a Freehold; nor a Seisin in a natural Capacity, with Seisin in a Politick Capacity, &c. 1 *Inst.* 191, 192. *Perk.* 653. *Dyer* 67.

Two Jointenants are in Fee, if one makes a Lease for Life to a Stranger, this is a Severance of the Jointure, of the Freehold and Reversion. If a

Reversion descend upon one Jointenant, by this the Jointure is severed, and by Operation of Law they become Tenants in Common; but if Lands be given to Two, and the Heirs of one of them, and after the Reversion descends upon one, this shall not sever the Jointure. And a Diversity has been taken, that where the Reversion comes to the Freehold, the Jointenancy is destroy'd: But when the Freehold comes to him in Reversion, and to another, it is otherwise. Where one Jointenant levies a Fine, it severs the Jointenancy; but it doth not amount to an actual Turning out of his Companion. *Lutw.* 729. *Cro. Eliz.* 470, 743. 1 *Salk.* 286.

Although Survivorship be proper to Jointenants, yet there may be a Jointenancy without equal Benefit of Survivor; as if a Man lets Land to *A.* and *B.* during the Life of *A.* if *B.* die, *A.* shall have all as Survivor; but if *A.* dies, *B.* shall have nothing. If two Women are Jointenants of a Lease for Years, and one of them marries and dies, the Survivor shall have the Whole, and the Husband of the other Dying shall not have it; for tho' all Chattels real are given to the Husband if he survive, yet the Survivor between Jointenants is the elder Title: But this is understood, where the Husband hath not alienated the Wife's Part, and severed the Jointure. And if a Jointenant doth not alienate his Part, to bar the Survivorship; Jointenants sometimes enter into Covenants not to take Advantage of each other by Survivorship. 1 *Inst.* 181, 185. *Wood's Inst.* 148.

If Two or more disseise another of Lands or Tenements to their own Use, they are Jointenants; and if it be to the Use of one that is absent, and knows not of it, they are Jointenants before he agrees; but after he agrees, they cease
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176 Of Estates held in Common,

to be Tenants, and he to whose Use the Disseisin is made, is sole Tenant, and as much a Disseisor as if he had commanded it, and the others have nothing in the Tenancy, but are called Co-adjutors or Assistants to the Disseisin, &c. And Disseisin is where a Man enters into Lands, &c. that has no Right of Entry, and ousts him that hath the Freehold; but an Entry alone is not a Disseisin, without there is an Ouster also, as an Entry and Claimer, or Taking the Profits. 1 *Inst.* 180, 181. *Plowd.* 89. *F. N. B.* 179.

If two Jointenants, the one for Life, and the other in Fee, lose by Default, one shall have a Writ of Right, and the other a *Quod ei desorcent*; and yet when they have severally recovered they shall be again Jointenants: So it is if two Jointenants are disseised, and an Affise is brought, and one is summoned and severed, and the other recovers the Moiety, and after another Affise is brought and Recovery thereon, &c. And in all Cases where the Jointenants pursue one joint Remedy, and the one is summoned and severed, if the other Jointenant recover, he that is summoned and severed shall enter with him; but where the Remedies are several, there the one shall not enter with the other, 'till both have recovered. 1 *Inst.* 188. *Dyer* 9.

By Statute 31 *Hen.* 8. it is ordained, that Jointenants and Tenants in Common of any Inheritance in their own Right, or in the Right of their Wives, in any Lands, &c. may be compelled to make Partition thereof, as Coparceners: And after the same is made, they shall have Aid one of another, and of their Heirs, to deraign Warranty, and to recover for the Rate of the Lands. On this Act, it has been held, that tho' a compulsory Partition by Writ saves the Warranty, by the express

Words of the Statute, yet a voluntary Partition destroys it. Another Statute hath enacted, that Jointenants and Tenants in Common holding for Term of Life or Years, or where one or some of them hold jointly, or in Common with others that have Estates of Inheritance or Freehold, may be obliged to make Partition, &c. *Stat. 32 H. 8. cap. 22.* After Jointenants have made Partition by Deed, they are several Tenants.

A Jointenant may not bring Action of Trespass or Trover against another, because the Possession of one is that of both of them. 1 *Salk.* 290. One Jointenant may distrain for Rent due alone, and not have any Authority from the Rest as Bailiff: But he must avow in his own Right, and as Bailiff to the other, and the Return be made accordingly, in which Case he is accountable to the other; and he cannot avow solely, nor may he have Action of Debt alone, but the Defendant may plead in Abatement to it; tho' unless that be pleaded, the Plaintiff shall recover. 5 *Mod.* 72, 73. 3 *Mod.* 97.

The Property a Man hath in Lands held in Jointenancy, is said not to be in himself; 'tis not in one, but in both: But one Jointenant by Law may receive the whole Profits of all the Rest, and his Discharge is good; as is the Payment of Rent to one Jointenant, for such Payment to one, is so to the other. *Ibid.* But before the Statute 3 & 4 *Ann.* One Jointenant had no Remedy against his Companion, to recover Damages for what he had received more than his Share; and a Jointenant might prejudice his Companion in the Personalty, by Reason of the Privity and Trust between them, though not in the Realty; but that Statute gives Action of Account to one Jointenant or Tenant in

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Common

178 Of Estates for Life, and

Common, his Executors or Administrators against the other as Bailiff or Receiver, his Executors, &c. *Stat. 3 & 4 Ann. cap. 16.*

Per the Lord Chancellor *Cowper*, a Jointenancy is a Thing odious in Equity, (tho' of an Inheritance it is said to be favoured in Law) as on the Death of one, all must go from the Representatives, to the Survivor. 1 *Salk.* 158. and *vide* 392.

Of Estates for Term of Life, and Years, Leases to Tenants, Covenants, Rents, Reparations, Waste, Common, &c.

AN Estate for Life, is where a Man lets Lands and Tenements to another for Term of the Life of the Lessee, or of some other Person; in this Case the Lessee is Tenant for Term of Life. *Litt. Sect. 56.*

But in common Understanding, he that holds for Term of his own Life, is called Tenant for Life; and he which holds for the Life of another, is called Tenant for Term of another's Life: And every one who hath an Estate in any Land or Tenements for Term of his own or another Man's Life, is Tenant of the Freehold, and none other of a less Estate; but those of a greater Estate have a Freehold, for he in Fee-simple hath Freehold, and Tenant in Tail hath a Freehold, &c. This Freehold Estate for Life, might formerly have passed without Deed, before the Statute of Frauds and Perjuries;

Pears, Leases, Covenants, &c. 179

Perjuries ; but cannot now pass, but by Deed and Livery, if of Things whereof Livery can be made. *Litt.* 57, 59.

The Estate for Life is divided by *Littleton* into two Branches, as above, to which the Lord *Coke* has added a Third, an Estate a Man hath both for his own and another's Life. And if a Lease be made to a Man for his own Life, and the Lives of *B.* and *C.* he hath but one Freehold, with several Limitations ; which is higher than an Estate for his own Life only ; but when there are several Estates, in several Persons, an Estate for one's own Life is higher than for another's : And altho' such an Estate for Term of a Man's own Life, be but one Freehold, yet may several Freeholds in certain Cases be derived out of the same ; as if Tenant for Life make a Lease to him in Remainder or Reversion, in Tail or in Fee, for the Term of either of their Lives, and after he in the Remainder takes Wife and dies, his Wife shall not be endowed, for the Tenant for Life shall enjoy the Land again ; and forfeited it cannot be, as he in Remainder was Party, and it cannot be a Surrender, because the whole Estate of the Tenant for Life was not given. So if the Husband's Heir make a Lease for Life, against whom the Widow recovers her Dower therein, and then dies, the Lessee shall have the Land again for his Life. 1 *Inst.* 41, 42. 2 *Roll.* 497.

A Lease was made to *A.* and his Assigns, to hold to him during his Life, and the Lives of two others ; and it was adjudg'd, that the Limitation was good : For tho' it was objected, that when a Man has two Estates in him, the greater shall drown the less, and that an Estate for his own Life is higher than for the Life of another, and therefore such Estate during his own Life and for the Lives of others cannot stand together ; to this

180 Of Estates for Life, and

it was answered and so resolved, That in this Case the Lessee had but one Estate, which hath this Limitation, *viz.* during his Life, and the Lives of the other Two, and that he had but one Freehold, therefore there cannot be any drowning of Estates, but he hath an Estate during these three Lives, and the Survivor of them. 5 Rep. 13. 1 Cro. 182.

If a Lease be granted to a Person, during the Lives of *A.* and *B.* and doth not say of the Survivor; if one dies, the Estate is not determined; for by Construction of Law, the Lessee by Way of Limitation hath an Estate of Freehold during the Life of the Survivor of them: As where a Man makes a Lease of Land to two Men for their Lives, and they assign their Estate over; now the Assignee hath an Estate for the Lives of the two Men, and if one dies, he shall have the Land during the Life of the Survivor: But there is a Diversity between a Limitation, and a Condition; for if a Demise is made of Lands for a hundred Years, if *C.* and *D.* live so long, if one of them dies the Lease is ended, because it was conditional, and not determinable by Limitation of Estate. 5 Rep. 9.

Tenant in Fee-simple makes a Lease to another to hold for Life, without mentioning for whose Life, it shall be construed to be for the Life of the Lessee; here it shall be taken most strongly against the Lessor, and as hath been said, an Estate for a Man's own Life, is higher than for another's Life: But if Tenant in Tail, make such a Lease for Life, it shall be taken to be for the Life of the Lessor; for if it were construed for the Life of the Lessee, it would cause a Discontinuance of the Estate-tail; and the Law more respects a less Estate by Right, than a greater Estate by Wrong. If a Man grant Lands or Tenements, Reversions, &c. and express no Estate in the Deed, (due Ceremonies requisite
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Pears, Leases, Covenants, &c. 181

in Law being performed) the Grantee or Lessee hath an Estate for Life. 1 *Inst.* 42.

A Lease is made of Lands to a Woman to hold during her Widowhood, or so long as she shall live sole; or to a Man *quam diu se bene gesserit*, or so long as the Lessee shall pay 10 *l.* per Annum, or 'till he be promoted to a Benefice, or for any other uncertain Time; in all these Cases, if it be of Lands or Tenements, and Livery be made, the Lessee hath in Judgment of Law an Estate for Life determinable: And if it be of Rents, Advowsons, or any other Things that lie in Grant, he will have an Estate for Life by Delivery of the Deed. If a Man make a Lease of a Manor, that at the Time of the Lease made is worth 20 *l.* a Year, until a hundred Pounds be paid, the Lessee hath an Estate for Life, Livery being made, determinable upon levying the 100 *l.* because the annual Profits are uncertain. But some uncertain Estates are not for Life; for where Lands are devised to Executors for Payment of Debts, and until such Debts are paid, the Executors have only a Chattel Interest in the Lands; and if it should be construed an Estate for Life determinable, then by their Death the Estate would cease, and the Debts be unpaid; but being a Chattel, it goes to the Executors of the Executors. *Cro. Eliz.* 315. *Plowd.* 273. 1 *Sid.* 146.

The *Habendum* in a Lease for Life or other Deed, to one not Party to the Deed is void for holding the present Estate; but good by Way of Remainder. And where a Man seised in Fee demises to *B.* to hold to *B.* and also to *D.* and *E.* for their Lives, and the Life of the successive longer Liver; here none can take but *B.* because he is only Party to the Deed, and the rest are only named in the *Habendum*: Then being named in the *Habend.* they cannot any Ways take but in

182 Of Estates for Life, and

Remainder; which here they cannot do, by Reason of the Incertainty who shall take, for *D.* and *E.* cannot have a joint Estate with *B.* because they are not Parties. *Hob.* 313, 314. *Raym.* 143. *Carter* 145.

A Lease for Life to commence *in futuro* is void, for Livery cannot be made to a future Estate: But where such Lease for Life is made *Habendum* at a Day to come, and after the Day the Lessor in Person makes Livery, there it shall be good. And *Livery and Seisin* required in these Cases, and on Feoffments, is a solemn Delivery of the Possession of the Lands, &c. to the Person having Right to the same: It is done by Taking the Ring of the Door of a House, or Turf of the Land, &c. and delivering it to the Grantee in the Name of Seisin of the House or Land, contained in the Deed, &c. When a House and Lands are intirely demised, the House is the Principal, and there the Livery must be, not on the Land; no Person ought to be in the House, or upon the Land, when Livery is made, but the Parties to the Deed, for all others are to be removed from it; and after Delivery of Seisin, the Grantee or Lessee enters into the House first alone and shuts the Door; and then opens it, and lets in other Persons. *5 Rep.* 94. *1 Roll. Abr.* 828. *1 Inst.* 48. *2 Rep.* 31. *Cro. Eliz.* 321.

Where Tenant for Life grants a greater Estate than he hath, as by making a Feoffment in Fee, levying of a Fine, or suffering a Recovery, this is a Forfeiture of his Estate, by a Condition in Law annexed to it; and the Lessor and his Heirs shall not only take Benefit thereof, but also his Assigns. If there be Tenant for Life, Remainder in Tail, and Reversion in Fee, and the Tenant for Life enfeoffs him in Reversion; it is a Forfeiture of his Estate for Life, and divests the Estate-tail in
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Years, Leases, Covenants, &c. 183

the Remainder: Though where there is Tenant for Life, with Remainder in Tail, and Remainder in Tail; if Tenant for Life and he in the first Remainder in Tail join in a Grant by Fine *Sur Conu- zance*, &c. to another, this is no Forfeiture of the Estate for Life; because each gave what he lawfully might give; and the Law construes this to be first the Grant of him in Remainder in Tail, and afterwards the Grant of Tenant for Life. *Litt. Sect. 415. 1 Inst. 251. 1 Rep. 76.*

If Tenant for Life, and he in Remainder in Fee make a Lease for Years; it is during the Life of the Tenant for Life the Lease of Tenant for Life, and Confirmation of him in Remainder; and after the Death of Tenant for Life, it is the Lease of the Remainder-man; and if an Action be brought upon this Lease, the Declaration and Proceedings must be accordingly. A greater Estate may support a less, tho' not the contrary; as if a Lease be made for Life, and Remainder for Years, to the same Person, both Estates remain distinct in him, and he may grant over either of them: But if it be a Lease for Years, Remainder for Life, the latter drowns the former. *1 Inst. 45, 54. Cro. Car. 154. Cro. Eliz. 701.*

Where the Lessee Tenant for Life, and Lessor having the Estate in Reversion join in a Lease for Life, it is said that they shall join in an Action of Waste, and the Lessee for Life shall recover the Place wasted, and he in Reversion Damages. To every Tenant for Life, the Law gives him as incident to his Estate three Kinds of Estovers; *viz. House-bote*, or an Allowance of Timber, for repairing and upholding of a House or Tenement, and is also two-fold, *i. e. Estoverium edificandi*, and *Ardendi*; *Plough-bote*, which is *Estoverium arandi*, or a Right to take Wood to repair Ploughs,

Harrows, and for making Rakes, Forks, &c. And *Hay-bote*, called in Law *Estoverium Claudendi*, being a Liberty to take Thorns and other Wood to make and repair Hedges, Gates, Fences, &c. All these must be reasonable, and the Tenant may have them upon the Land demised, without any Assignment, so as not to commit Waste, unless he is restrained by special Covenant: And Tenant for Years shall likewise have the same Estovers. 1 *Inst.* 41.

A Lessee for Life or Years hath a special Interest or Property in Timber Trees, so long as they are annexed to the Land: But if the Lessee, or any other severs them, the Lessee's Interest is thereby determined; and the Lessor may take them, as Things which were Part of his Freehold and Inheritance. The Property of the Timber is reserved to the Lessor by the Law, but he cannot grant it without the Licence of his Tenant; for the Tenant hath also an Interest in it, to have the Mast and Shadow of the Trees for his Cattle, and the Shrowds for Fuel and Fences: A Lessor may, during a Lease for Life, grant the Trees to a Stranger, to take Effect after the Lessee's Death; tho' not to be cut down during the Lessee's Life; for such Grant will be void, by Reason of the Prejudice that would accrue thereby to the Tenant for Life. 4 *Rep.* 62. 11 *Rep.* 48.

If there be Tenant for Life without Impeachment of Waste, the Reversion in Fee to J. S. In this Case, the Tenant for Life may cut down the Trees, and convert them to his own Use; and the Reversioner shall not have them: And yet the Clause without Impeachment of Waste, it is said, doth not give the Tenant for Life any greater Interest in the Timber-Trees than he had by the Demise of the Land; but he is thereby excused from
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Years, Leases, Covenants, &c. 185

any Action of Waste to be brought against him, or for Damages, or the Place wasted, to be recover'd against him. 4 *Rep.* 62, 63.

The Lessee for Life sows the Land with Corn, and dies before he can reap it, his Executors shall have the same, and not the Lessor or him in Reversion: Here the Crop on the Ground is called *Emblements*, from a *French* Word of that Signification, and the Lessee's Executors are intitled thereto, by Reason of the Uncertainty of his Estate, and because it is for the publick Good that Land should be cultivated; and otherwise such Lessee, whose Interest depended on a Contingency, would be afraid to do it. But if a Lessee for Years sow the Ground, and before Severance of the Corn his Lease expires, the Lessor or he in Reversion shall have it; for here the Term was certain, and determined by the Lessee's Act, and therefore it shall belong to the Owner of the Soil. 1 *Inst.* 55. 11 *Rep.* 51. *Dyer* 173.

If Tenant for Years, if he so long live, sow the Ground, and die before Severance; the Executor of the Lessee shall have the Corn: And in Case a Lessee for Life leases for Years, if the Lessee for Years sows the Land, and after Lessee for Life dies before the Corn is severed, the Executor of such Lessee for Years shall have it. Tho^t if Tenant for Life sows his Lands with Corn, and afterwards grants over all his Estate and Right to another; if the Grantee dies before Severance of the Corn on the Ground, it is said his Executors shall not have the Corn, but he in Reversion. *Cro. Eliz.* 464. 2 *Danv. Abr.* 765. *Hob.* 132.

By Statute it is enacted, That when Tenant for Life shall remain beyond the Seas, or e^lsewhere absent himself by the Space of seven Years, and no sufficient Proof be made of his being living; in any
Action

186 Of Estates for Life, and

Action to be brought by the Lessor or Reversioner for the Estate, such Person shall be accounted as if naturally dead. But it is provided, that if such Person be evicted, and shall return from beyond the Seas, or after be made appear to be living; then he shall recover the full Profits of the Land, with Interest, for the Time he hath been kept out of the same by the Lessor or Reversioner. *Stat. 19 Car. 2. cap. 6.* And by another Statute, Persons in Remainder or Reversion of Estates, after the Death of another, on Affidavit in the Court of Chancery that they have cause to believe such other Person dead, and his Death concealed, &c. may move the Lord Chancellor to order such Person to be produced; and if he be not produc'd, he shall be taken as dead, and those in Reversion may enter upon the Estate. Also by this Statute, if such Person be abroad, a Commission may be issued for his being viewed by Commissioners, &c. *6 Ann. c. 18.*

Altho' a Lessee for Life or Years loseth his Lease of the Lands let unto him, yet he shall not lose his Term in the Lands, if it can be proved any way that there was such a Term let unto him by Lease, and that it is not determined: So it is of any other Estate in Lands, if the Deed that created the Estate be lost, and it is prov'd that there was such a Deed made, and such an Estate conveyed by the Deed. For the Estate in the Lands is derived from the Party that made it, and not from the Deed, otherwise than instrumentally and declarative to shew his Mind and Intent that conveys the Estate; as also the Mind and Intent of him that receives it, and the Losing of the Deed can make no Alteration herein. *Pasch. 1650. 2 Lill. Abr. 152.*

Years, Leases, Covenants, &c. 187

A Lease for 99 Years, &c. determinable upon a Life or Lives, or an Estate for 1000 Years, is not of so high a Nature as a Freehold Estate for Life.

An *Estate for Term of Years*, is where Lands or Tenements are let to a Person by Lease, for a certain Number of Years agreed upon; and when the Lessee enters by Virtue of his Lease, then is he called Tenant for Years. *Litt. 58.*

And in a Lease for Years there needs no Livery of Seisin to be made to the Lessee; tho' regularly no Freehold can pass without it; but the Lessee may enter when he will by Force of the Lease: And if the Lessor or Landlord dies before the Lessee or Tenant enters into the Tenements, yet he may enter into the same after the Lessor's Death; because the Lessee by his Lease hath Right presently to have the Lands according to the Form of the Lease, and the Interest of the Term doth pass to and vest in the Lessee before Entry, and therefore the Death of the Lessor cannot divest that which was vested before. *Litt. Sect. 59, 66. 1 Inst. 51.*

The Lessee is not Tenant for Years till his Entry, and a Release made to him to increase his Estate before Entry is not good: Tho' the Lessor may release the Rent to the Lessee before he enters on the Premises, in respect of the Privity between them; and the Lessor cannot grant away the Reversion, for there is no Reversion till the Lessee's Entry. But the Lessee hath before Entry an Interest, called in *Latin Interesse Termini*, which is grantable over to another, and shall go to Executors, &c. and the Grant shall remain good, tho' the Lessor die before the Lessee enters; because he may enter afterwards, and if Lessee dies, his Executor may enter. And if two Persons have such a joint Interest, and one die, it shall survive to the other. *1 Inst. 46.*

If

188 Of Estates for Life, and

If a Lease for Years be made to a Man and his Heirs, or to a Bishop and his Successors, it shall go to the Executors; for regularly no Chattel, as Lease for Years is, can go to Heirs or in Succession. And where one makes a Lease for Years of Land, or of the Herbage, or Vesture of Lands, or any other Tenement manurable and corporeal, reserving a Rent thereupon, he may distrain for it, or have an Action of Debt for the same; and if one make such Lease of a Reversion or Remainder of such Tenements, he may distrain, &c. for the Rent reserved, when the Possession comes to the Lessee by Force of such Lease. 1 *Inst.* 46, 47. *Dyer* 377.

A Lease may be made of any Thing that lies in Livery or Grant; and Goods and Chattels may be leased or granted for Years: But Leases for Years should be of such Lands, &c. whereunto the Lessor may come to distrain; not of incorporeal Inheritances. Every Lease is to be made for a less Time, than the Lessor hath in the Premises: And generally to the making of a good Lease, several Things necessarily concur; there must be a Lessor, not restrained to make a Lease; a Lessee, not disabled to receive it; a Thing demised, which is demisable; and a sufficient Description of the Thing demised, &c. If it be for Years, it must have a certain Commencement and Determination; it is to have all the usual Ceremonies, as Sealing and Delivery, &c. and there must be an Acceptance of the Things demised. *Litt.* 56. *Plowd.* 273, 523.

Articles with Covenants to let and make a Lease of Lands, for a certain Term, at so much Rent, hath been adjudged a Lease: In a Covenant, the Words *have, possess and occupy* Land, in Consideration of an yearly Rent, without the Word *Demise*, it hath been held to be a good Lease: And a Licence to occupy, take the Profits, &c. which passeth

passeth an Interest, amounts to a Lease, &c. But every Contract sufficient to make a Lease, ought to have Certainty in Commencement, in Continuance, and in the End, or it may be void: Tho' a Lease for Years may commence from a Day past, or to come; as *Christmas* next, three or ten Years after, &c. But there ought to be a Person at the Time of the Commencement to take the Lands: and there must be an express Enumeration of the Years in these Leases, or the Term be certain by Reference to a Certainty. *Cro. Eliz.* 486. *Plowd.* 272. *6 Rep.* 35. *Vaugh.* 85.

For these Reasons, if a Lease be made for so many Years as *A. B.* shall live, it is void *ab initio*: But a Lease for Twenty-one Years, if *A. B.* live so long, is a good Lease for those Years, determinable on the Death of *A. B.* for there is a certain Period fixed, beyond which it cannot last, tho' it may determine sooner; and here is said to be a Certainty in an Uncertainty. A Lease may be limited to take Effect upon a Condition or uncertain Contingent; as if the Lessee pay 20 *l.* And by referring to a Certainty it may be made certain, as for so many Years as *J. S.* has in the Manor of *D.* A Parson makes a Lease for three Years, and from three Years to three Years, so long as he shall be Parson; this will be good for six Years, if he continue Parson so long, for so much only is certain, the Rest being uncertain and void. A Lease for so many Years as another shall name, is uncertain at first, but good when he has named them. *1 Inst.* 45. *6 Rep.* 35. *1 Roll. Abr.* 850.

A Man possessed of a Term for forty Years, grants to *B.* so many of the Years as shall be to come at the Time of his Death; this is void for the Incertainty: But if he had demised the Land, *Habendum* after the Death of the Lessor, for twenty
1
Years,

190 Of Estates for Life, and

Years, it would have been good. A Lease for twenty Years to commence at the Death of *J. S.* is a good Lease, because it is certain the Lands shall be enjoyed for twenty Years: And if a Man makes a Lease for eighty Years, if the Lessee shall so long live, and he afterwards leases to another for eighty Years absolutely, and then the first Lessee dies, the second Lessee shall have the Land for the Residue of the Term. Tenant in Fee makes a Lease for Twenty-one Years, to begin presently, and afterwards the same Day makes another Lease for the same Term; this second Lease is void to all Intents; but if he had granted the Reversion for Twenty-one Years, it had been good; and in Case the second Lease were made for thirty Years, it should have been good for the last nine Years. 1 Rep. 155. 2 Rep. 35, 36.

In Case a Term is granted to *A.* a Woman for eighty Years, if she lives so long; this Term determines by her Death: And if it then goes farther, and demises the Lands to *B.* for so many Years as shall remain after the Death of *A.* this Demise to *B.* is void; for there cannot be a Remainder of a Term which is gone. And a Lease being made to a Man for Ninety-nine Years, if he should so long live; and if he died within the Term, the Son to have it for the Residue of the Term: This was adjudged void as to the Son, because there can be no Limitation of the Residue of a Term determined. A Lease is made for Twenty-one Years, and after the Lessor makes another Lease, to commence from the End and Expiration of the said *Term of Years demised*; and afterwards the first Lease is surrendered, the second Lease shall commence presently: But if it had been from the End and Expiration of the said *Twenty-one Years*, there, altho' the first Lease was surrender'd, it shall not com-

Years, Leases, Covenants, &c. 191

commence; for the Twenty-one Years are not determined but by Fluction of Time, tho' the Term is by the Surrender. 1 Rep. 153. Plowd. 520. Cro. Eliz. 216.

As to the Time of Commencement of a Term for Years, if a Lease be made bearing Date the 26th Day of *May*, To have and to hold for Twenty-one Years, from the Date, or the Day of the Date, it shall begin the Day after the Date: If it be a *die Confectionis*, then it begins on the Day after the Delivery. But if the Lease bear Date the Twenty-sixth of *May*, To hold from the making, or from henceforth, it shall begin on the Day in which it is delivered, for here the Words are not of any Effect till the Delivery: So where the *Habendum* is for the Term of Twenty-one Years, without limiting any Beginning, it shall commence from the Delivery, because there the Words take Effect. And if an Indenture of Lease bear Date, that is void or impossible, as the 30th Day of *February*, &c. if in this Case the Term be limited to begin from the Date, it shall have Beginning from the Delivery, as if there had been no Date at all: And it is the same, if a Man by his Indenture of Lease, either recite a Lease, when in Truth there is none, or a Lease which is void, or misrecites a Lease that is *in esse* in a Point material, and grants a farther Term, to commence from the Determination of the former Lease, in such Case the new Lease shall begin from the Time of Delivery thereof. 1 Inst. 46. 5 Rep. 1. 2 Roll. 520. Dyer 307.

Where a Lease was made To hold *a dato Indentura*, it was said this was as much as to say, from the Day of the Date: But here the Court resolved, that the Date is the Time of the Delivery, and it differs from the Time or Day of the Date. A Lease being made *Habend.* from the 20th of *November*,

192 Of Estates for Life, and

venner, for five Years; the Question was, whether this was a good or a void Lease? And it being uncertain what *November* was meant, it was therefore insisted that it was an impossible Limitation of the Commencement of the Term; and there are many Examples of Leases being void for Uncertainty of Commencements, which could not have been adjudged so, if the Limitation in this Case were good: Two Judges held, that the Lease should begin from the Delivery; but at last it was otherwise determined to be void. *Cro. Jac.* 135, 136. 3 *Lev.* 438. 1 *Mod.* 180.

One seised of an Estate in Fee-simple, in his own Right, of any Lands or Tenements, may grant a Lease of it for what Lives or Years he will: And he that is seised of an Estate-tail in Lands, may make Leases thereof warranted by the Statute of 32 H. 8. He who is seised of an Estate for Life, may make a Lease for Years of the Estate, and it shall be good as long as the Estate for Life doth last. And a Person possessed of Lands for Years, may grant a Lease of all the Years except one Day, or any short Part of the Term; for if all the Estate be granted, it is an Assignment: And if Lessee for Years makes a Lease for Life, the Lessee may enjoy it for such Lessor's Life, if the Term of Years lasts so long; but if he gives Livery of Seisin upon it, this is a Forfeiture of the Estate for Years. 1 *Inst.* 42, 44. *Wood's Inst.* 267.

A Person intitled by Lease to a House and Lands for a long Term of Years, grants the Premises to another, together with the said Lease particularly recited, and also all Writings, &c. *Habendum* to the Grantee, from and immediately after the Death of the Grantor, for the Residue of the Term then to come and unexpired: It was here a Doubt, whether this was a good Grant, the Grantor having

Years, Leases, Covenants, &c. 193

ving reserved to himself an Estate for Life, which by Construction of Law is greater than any Estate for Years. In the King's Bench, the Grant was held void; but on a Writ of Error, it was adjudged to be good upon the Premises, without the *Habendum*; tho' if it had rested on that, it would, have been otherwise: And Chief Justice *Treby* said that when a Man reserves to himself the Interest of the Land during his Life, it is in Notion of Law the whole Interest; and the Law never has received any such Grant of a Term, tho' it has permitted Devises of a Term in such Manner. *Trin. 6 Will. & Mar. Skinn. 530, 545.*

Leases may be granted for any Term, or Number of Years, Months or Weeks; or be from Month to Month, or Week to Week, &c. for three or four Years, and be good for those Years: And a Tenant for Half a Year, or Quarter of a Year, is Tenant for Years. If a Man makes a Lease for one Year, and so from Year to Year, as long as both Parties please, it is a Lease for two Years; and afterwards it is but an Estate at Will. And where such Lease was made from Year to Year, without first granting one Year; it is said, that altho' this was a Lease certain but for two Years, yet when the Lessee occupies and enjoys it Part of the third Year, it is then a Lease for that Year also; so that neither the Lessor or Lessee can determine the Will during that Year, which he had begun to occupy. But *Popham* held, that it was a Lease at Will, after the two Years. 1 *Sid. 423. Cro. Eliz. 775. See Lutw. 213.*

By *Holt C. J.* If *A.* demise Land to *B.* for a Year, and so from Year to Year, this is not a Lease for two Years, and after at Will, but it is a Lease for every particular Year, and after the Year is begun, the Lease cannot be determin'd before

194 **Of Estates for Life, and**

the Year is ended: It was adjudged in *C. B.* to be a Lease for two Years, &c. in such a Case. A Man having granted Lands to another, *Habendum de anno in annum, & sic ultra quamdiu ambabus partibus placeret*, to commence from a certain Time, rendring an annual Rent: The Court ruled, that after the two Years, the Lessor or Lessee might determine; but if the Lessee held on, he was not then Tenant at Will, but for a Year certain; for his holding on must be taken to be an Agreement to the original Contract, and in Execution of it; and the first Contract was from Year to Year: That the third Year is not in the Nature of a distinct Interest, because it arises from the same Executory Contract, and therefore the Lessor may distrain the third Year for the Rent of the second; and such an Executory Contract as this, is not void by the Statute of Frauds, tho' it be for more than three Years, because there is here no Term for above two Years ever subsisting at the same Time; and there can be no Fraud to a Purchaser, for the utmost Interest that can be to bind him, can be only one Year. 2 *Salk.* 413, 414.

A Person seised in Fee of a certain Messuage, &c. demised it to *J. S.* for a Year, and so from Year to Year as long as both Parties should please, by a Parol Demise, reserving Rent; and that the Lessee should not go away without giving a Quarter's Warning. Here *Holt* said, the Agreement concerning the Quarter's Warning is only a collateral Agreement, not affecting the Land in Point of Interest, but collaterally binding the Person of the Lessee; and in this Case, if at the Year's End the Lessee give up the Possession without any Warning, he will be liable to pay a Quarter's Rent by Virtue of this Agreement; but if he gives a Quarter's Warning, he may quit without more ado; tho' if
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Years, Leases, Covenants, &c. 195

he once enters on the second Year, he will be bound for all that Year, and to a Quarter's Warning. *Mod. Caf. 215.*

And it would be the same Thing, if such a Lease had been by Deed: If a Lease be for a Year, and so from Year to Year, as long as both the Parties shall please, that is a Lease binding but for one Year; but if the Lessee, without Countermand of the Lessor, enter upon the second Year, he is bound for that Year, and so on: But if the Lease be for a Year, and from Year to Year, till six Years expire, that is a Lease certain for six Years: If it is for a Year, and so from Year to Year, as long as both Parties shall agree, until six Years shall expire, that is a Lease for the six Years determinable at every Year's End at the Will of either Party. *Ibid.*

By the Statute of Frauds, made for Prevention of fraudulent Practices, endeavoured to be upheld by Perjury; all Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest of, in or out of any Messuages, Lands, Tenements or Hereditaments, not put in Writing, and signed by the Parties making or creating the same, or their Agents thereunto lawfully authorized by Writing, shall have the Force and Effect of Leases, or Estates at Will only, and shall not in Law or Equity be deemed or taken to have any other or greater Effect; notwithstanding any Consideration for making any Parol Leases or Estates, or any former Law or Usage: Except Leases not exceeding the Term of three Years from the making thereof, whereupon the Rent reserved to the Landlord, during such Term, shall amount to two third Parts at least of the full improved Value of the Thing demised. 29 *Car. 2. c. 3.*

It appears by this Act, that Leases exceeding three Years, must be made in Writing, otherwise

196 Of Estates for Life, and

they are but Leases at Will; and if the Substance of a Lease be put in Writing, and signed by the Parties, tho' it be not sealed, it shall have the Effect of a Lease for Years, &c. If a Man enters into Land by Consent of the Owner, he is Tenant at Will: So when a Person is in Possession, and has paid any Rent to the Landlord, tho' but a Quarter's Rent, and altho' no Demise or Agreement can be proved between the Owner of the Land and the Tenant; for it shall be presumed the Rent was received upon some private Contract. *Raym.* 147.

And a *Lease at Will*, altho' it be sometimes at the Will of the Lessor, ought regularly to be at the Will of both Parties; and the Lessor and Lessee, where the Estate is held at Will, rendring Rent quarterly, may either of them determine the Will when they please: But if the Lessor doth it within a Quarter, he shall lose that Quarter's Rent; and if the Lessee doth it, he shall pay a Quarter's Rent; and he should determine his Will on the very Day of Payment of the Rent, not before or after: The Law will not allow the Lessee to do it to the Prejudice of the Lessor, as to the Rent; nor that the Lessor shall determine his Will, to the Damage of the Lessee, after the Land is sowed with Corn, &c. But if Tenant at Will sows the Ground, and he afterwards determines his Will, and refuses to occupy the Land, the Lessor shall have the Corn, because he loseth his Rent. 1 *Inst.* 55. 2 *Salk.* 413.

A Lease at Will may be by Parol, or in Writing; but it is most commonly by Parol: And the Tenant at Will hath no Estate in him until his Entry. If the Lessee at Will granteth over his Estate, and the Grantee enters; the Grantee is a Disseisor: For Tenant at Will hath not such an Estate in him that he can grant over, and therefore his Grant is void; and this amounts to a Determination of the Will;
and

and Trespas will lie against him. The Lessee at Will is not bound to repair the Premises, as Lessee for Years is; and for permissive Waste there is no Remedy: But in Case he commits voluntary Waste, in pulling down of Houses, felling of Trees, &c. Action of Trespas lieth; and the cutting down of Timber, and pulling down Houses, do also amount to the Determination of the Will. *Cart. 67. 1 Inst. 57. Litt. Sect. 71. 5 Rep. 13.*

No Words spoke off from the Land by the Lessor will determine the Will, till the Lessee hath Notice thereof: But an actual Entry in the Absence of the Lessee will determine it. And the Lessor may come upon the Land, and forbid the Lessee to hold it any longer; or he may enter thereupon in Form, in the Presence of Witnesses, and if he thinks fit, cut a Twig of a Tree, or a Turf, &c. as taking Possession. If the Lessor dies, the Estate at Will is determined; and here the Tenant at Will becomes Tenant at Sufferance. *1 Inst. 56, 57.*

The Tenant at *Sufferance*, is without Agreement after a particular Estate ended: And he is such who at the first came in by lawful Demise, and not as an Intruder by Wrong, and after his Estate determined, continues the Possession wrongfully, and holdeth over. But where he holds over, and continues to pay his Rent as before quarterly; this Payment and the Acceptance of the Rent, amounts to a new Lease: And until Entry the Right remains in the Tenant, because he hath the Possession; so that the Owner is without Remedy for any Thing, nor can he bring Trespas till he hath entered. If such Tenant at Sufferance makes a Lease for Years; this is a Disseisin, and turns the Estate to a Right, for which an Entry is given by Law, &c. *Carter 64, 162. 1 Inst. 57. Alleyn 4. 2 Leon. 143. 5 Mod. 384. See Stat. 4 Geo. 2. c. 28.*

198 Of Estates for Life, and

A common Lease for Years in Writing is sealed by the Lessor, and the Lessee hath not sealed the Counterpart; here Action of Covenant may be brought upon the Lease against the Lessor: But where the Lease is seal'd by the Lessee only, and not the Lessor, nothing operates thereon. One out of Possession, cannot make a Lease of Lands, without entering and sealing the Lease upon the Lands; or empowering others by Letter of Attorney to do it: And a Lessee for Years is not in Possession, so as to maintain Action of Trespass, &c. until he actually enter on the Lands demised. But a Lessee of a Remainder or future Interest never enters by Virtue of his Term, but enters before, and continues after the Commencement of the Term; and if then the Lessor ousts him, the Lessee may assign over his Term off from the Land. If a Man make a Lease for Years, and afterwards the Lessor enters upon the Premises let, before the Term is expired, and makes a Lease of these Lands to another; this will be good 'till the Lessee doth re-enter, and then the first Lease is revived, and he is in thereby. *Yelv.* 18. *Owen* 100. *Dallif.* 81. 1 *Lev.* 47. 2 *Lill. Abr.* 152, 160.

In a Case of a Lease for Years, granted to begin from *Michaelmas* then next following, the Lessee enter'd on the twenty-third of *September* before, and then continued in Possession, &c. *Bridgman*, Ch. Just. said, That the Term not being to commence 'till *Michaelmas*, the Entry by the Lessee before was a Disseisin; and his whole Continuance in Possession after was by Wrong, and not any Possession by Virtue of the Lease. In a like modern Case it was admitted, that if the Lessee enters before the Commencement of his Lease, he is a Disseisor, and no Lessee; but here was the Consent of the Lessor as to the Continuance:

ance: And the Court held, that as the Lessee did not only enter before the Day, but continued in Possession after the Day the Lease commenced; he might be taken for a Disseisor by his tortious Entry; but not by any Means for his continuing in Possession, by the Lessor's Consent. 1 *Lev.* 47. *Mod. Caf. L. and E.* 54, 55.

A Man possessed of a Term for Years in Right of his Wife, made a Lease thereof to commence after his Death; he died and his Wife survived; and this was adjudged a good Lease against his Wife: For the Husband during his Life might have sold the whole Term which the Wife had in it; so also he might do any Part of the Term; but the Wife shall have so much of the Term as is undisposed of by the Husband. If a Man having a Term in the Right of his Wife for forty Years makes a Lease of it for twenty Years, reserving a Rent, and dies; the Wife shall have the remaining Part of the Term, and the Husband's Executors the Rent: Because it is not incident to the Reversion, for that the Wife was not Party to the Lease. 1 *Inst.* 46. *Poph.* 4, 5.

If a lease be made to an Infant it is not void, only voidable at Election; for if it be for his Benefit, it may be good: But the Infant at his Election may make it void, by refusing and waving the Land before the Rent-day comes, for then no Action of Debt will lie against him: Though if it is not shewed, that the Rent is of greater Value than the Land, and the Infant be of full Age before the Rent-day come, he will then be liable in an Action of Debt. All Leases of any Dwelling-house or Shop within this Realm, or any of the King's Dominions, made to any Stranger, Artificer, or Handicraft-man, born out of the King's Obedience, not being Denizens, are void and of

200 **Of Estates for Life, and**

none Effect, by ancient Statutes. *Cro. Jac.* 320.
1 *Saund.* 7. 22 *Hen.* 8. *cap.* 16.

If a Lease be made for Years, on Condition that upon such Contingent it shall be void; in this Case, as soon as the Thing doth happen, the Lease is void *ipso facto*, without any Re-entry, &c. But if a Lease for Life be made on such a Condition, in that Case the Lessor must enter, before the Lease will be void. And there is this Difference between a Lease for Life and a Lease for Years; that if the Lease for Years concludes, then the Lease shall be void, &c. Here no Acceptance of the Rent due at any Time after the Breach of the Condition, makes the void Lease good; but in Lease for Life with such Condition, Acceptance of Rent due at a Day afterwards, will bar the Lessor of his Entry, as this voidable Lease may be affirm'd by Acceptance. 3 *Rep.* 65. *Cro. Eliz.* 528.

A Man makes a Lease for Years rendring Rent, upon Condition if the Rent be behind, that it shall be lawful for him to re-enter; here if the Lessor demands the Rent, and it is not paid, and afterwards he accepts the Rent before Re-entry made, at a Day after, he hath dispensed with the Condition which was annexed to the Rent: But on a collateral Condition, altho' he accepts such Rent, (due at the Day for which the Demand was made) yet he may enter; for as well before as after his Re-entry, he may have an Action of Debt for the Rent, on the Contract between the Lessor and Lessee. In Case of a Lease for Life, if the Lessor accepts the same Rent which was demanded, he hath affirmed the Lease; for he cannot receive it as due on any Contract, as in the Case of a Lease for Years, but he ought to receive the same as his Rent, and then he doth affirm the Lease to continue: And a Lease for Life being created by Livery,

very, cannot be determined before a Re-entry, which is barred by the Acceptance. 3 *Rep.* 64, 65.

The Lease which is voidable, and not absolutely void, must be made void by the Lessor's Re-entry; but if a Lease be void absolutely, there needs no Re-entry: And that Lease is said to be voidable which may be made void, if the Lessor will, and may be continued, if he please, at his Election; and then the Lease is made void by Re-entry, and putting out the Lessee; or else it is continued or affirmed by receiving the Rent, and thereby acknowledging the Lessee still to be Tenant: Where the Lease is absolutely void, acceptance of Rent will not affirm it. If a Lessee for the Term of twenty Years, accepts of a Lease of the same Land for ten Years; by the Lessee's Acceptance of the new Lease, the Term of twenty Years is determined by Surrender in Law: And if a Lessor accepts from his Tenant, the last Rent due to him, and gives the Lessee a Release for it, all Rent in arrear is presumed by Law to be satisfied. 21 *Car. B. R.* 2 *Lill. Abr.* 149. 2 *Roll.* 469. 1 *Inst.* 373.

It is held if a Lessee for Years assigns over his Lease to another, the Lessor may charge the Lessee or his Assignee for the Rent at his Election; and therefore if the Lessor accepts the Rent of the Assignee, he hath determined his Election, and shall not have Action against the Lessee afterwards for Rent due after the Assignment. If a Lessor accepts of Rent from an Assignee, knowing of the Assignment, it bars him from Action of Debt against the Lessee; for the Privity of Contract is extinguished: But after such Acceptance, the Lessor or his Assigns may maintain an Action against the first Lessee upon his Covenant for Payment of the Rent. The Accepting of Rent from the Assignee has been adjudged a sufficient Notice of an Assignment;

ment; so that the Lessor could not resort to the first Lessee in Debt, but to the Assignee. 3 *Rep.* 24. 1 *Saund.* 241. 2 *Bulst.* 151.

As the Assignee stands in the Lessee's Place, tho' the Landlord once refuse, he may at any Time after accept him for his Tenant, and bring his Action against him: But the Assignee and the first Lessee are both originally liable to the Lessor; and the Reason why the Assignee is answerable, is because of Privity of Estate; and the Assignor of the Privity of Contract. If a Lessee assign a Moiety of the Land, a Moiety of the Rent is payable by the Assignee, and the same is recoverable in Action of Debt. And an Assignment and Notice thereof, will not bar the Lessor from his Remedy against the Lessee, if it were fraudulent; for though the Assignment be a lawful Act of it self, yet Fraud may vitiate that as it doth other Things. 2 *Saund.* 181. *Moor* 544. 1 *Cro.* 555. *T. Jones* 104, 109.

If Lessee for Years assigns his Interest, and dies, his Executors shall not be charged for Rent due after his Death; because by the Death of the Lessee, the personal Privity of Contract, as to Action of Debt was determined: And so if the Executors of such Lessee assign over their Interest, an Action of Debt doth not lie against them for the Rent due afterwards. A Person being possessed of certain Houses, demised the same for a Term of Years, under a certain Rent, which the Lessee for himself, his Executors and Assigns covenanted to pay; the Lessee died, and his Executor assign'd over the Term, and in an Action of Covenant against the Assignee for Non-payment of the Rent, the Defendant pleaded he had assign'd his Interest over to another Person, &c. In this Case the Court held, that there was no Privity of Estate or Contract, and of Consequence the Action must fail; that the Assignee

Years, Leases, Covenants, &c. 203

signee was chargeable by Reason of the Land, and when he had parted with his Interest, there could be no Reason given why he should be any longer liable; especially since the Executor of the Lessee, is still bound to perform the Covenants in the Lease so long as he hath Assets. 3 *Rep.* 24. 1 *Salk.* 81. 4 *Mod.* 71.

In the arguing this Case, it was objected, that the Defendant did not shew that he gave Notice to the Plaintiff of this Assignment, or that he had accepted of the second Assignee for Tenant; and that the Lessee ought not to have it in his Power to put a Tenant upon his Landlord without Notice: But notwithstanding it was adjudged as above, upon a Writ of Error in *B. R.* And tho' the Interest might be assign'd to a Beggar, it was answered that it was the Lessor's own Fault and Folly to take the first Assignee for his Tenant: And in another Case it is said, that he who admits of one Assignee, admits of Twenty. 1 *Salk.* 81.

Rent.

The Lessor making a Lease for Years of Land in Fee-simple, cannot reserve *Rent* to any other but himself, his Heirs, &c. If he reserves a *Rent* to his Executors, the *Rent* shall be paid to the Heir, as belonging to the Reversion of the Land: And if the Lessor dies before the Day of Payment of *Rent*, it shall go to his Heir; but if it becomes due in the Lessor's Lifetime, it will go to his Executors: Also if a Lessor having made a Lease rendring *Rent*, after devises the *Rent* to another by Will; it has been held, that in such Case the Executor, and not the Heir shall have it, because 'tis but a Chattel in the Devisee. If the Lessor dies upon the Day of Payment mentioned

204 Of Estates for Life, and

tioned in the Lease, tho' after Sun-set, if before Midnight, and the Rent is unpaid, the Heir shall have it; and the Rent is not due 'till the last Instant of the Day, which is the most extreme Time, and legal and satisfactory, for 'till the End of the Day no Remedy is given by Law: But if the Rent be paid voluntarily in the Morning, and the Lessor dies at two Hours before Noon of the same Day, this Payment by the Lessee is good against the Heir, and the Executor shall retain it. 1 *Inst.* 47. 2 *Cro.* 144. 12 *Rep.* 36. *Raym.* 213. 10 *Rep.* 127. 1 *Saund.* 287.

In a late Case, a Person being Tenant for Life of Lands, with Remainder to another in Fee, made a Lease for Years, rendring Rent payable on a certain Day; and afterwards died about Two of the Clock in the Afternoon of that Day on which the Rent was payable; and the Tenant having paid the Rent to him that was next in Remainder, Administration was taken out to the Lessor who died Intestate; and then the Administrator exhibited a Bill in Equity to oblige the Person in Remainder, who had wrongfully received the Rent, to pay it over to him, alledging that the Rent was due to the said Intestate in his Life-time: Here it was held, that the Rent was not due from the Tenants until the last Minute of the natural Day on which 'tis payable, neither could they be compelled to pay it 'till after that Day; but they having paid the Rent, they admitted it was due from them, and 'tis plain the Defendant in Remainder had no Right to receive it; therefore it being paid into a wrong Hand who received the Rent without any Title, it ought to be paid over to the Administrator who had a colourable Title to receive the same. A Lessor died on *Michaelmas* Day in the Afternoon, before the Setting of the Sun; it was

Years, Leases, Covenants, &c. 205

was insisted, that the Rent being reserved payable on that Day might have been paid in the Morning, so as to go to the Executor: But it was adjudg'd, that it should go to the Heir, because at the Time of the Death of the Lessor there was no Remedy nor Means to compel the Payment thereof. *Mod. Caf. L. and E. 21, 22. 2 Salk. 578.*

If on a Lease made at *Christmas*, a Rent be reserved payable yearly at *Michaelmas* and *Lady-day*; yet the first Payment shall be at *Lady-day*, for otherwise it would not be paid yearly. And if a Man seised of Land in Fee, the first of *October* makes a Lease of the Land from the Feast of *St. Michael* the Archangel then last past, yielding to him and his Heirs the yearly Rent of 20 *l.* at the Feast of *St. Michael*, or within one Month after; in this Case, if the Lessor dies between the Feast of *St. Michael* and the End of the Month, the Heir shall have the Rent as incident to the Reversion, and not the Executors as Rent behind; because it was not due 'till the End of the Month: A Person seised of a Manor, by Deed indented leased the same for ninety-nine Years, if should so long live, paying the Rent of 100 *l.* on the Feasts of *St. Michael* and the Annunciation of our Lady, or within forty Days after each of the said Feasts; the Lessor died thirteen Days after *Michaelmas*, and in an Action of Debt for the Rent ended at *Michaelmas*, brought by the Lessor's Executors, it was determined against them. *1 Inst. 217. 10 Rep. 128, 129. Cro. Jac. 227, 228, 311. Cro. Eliz. 380.*

A Lease being made, rendring Rent at *Michaelmas*, or in ten Days after, &c. Two Judges held the Rent to be due at every *Michaelmas*, and that the Lessee might then tender it to the Lessor, but he hath Election whether he will pay it until the tenth Day be past; and if the Lessor release unto him

him all Actions and Rents due after *Michaelmas*, before the tenth Day, this Rent is released, and the Lessee hath only the Election for his Ease and Benefit: But two other Judges were of a contrary Opinion. Indeed in this Case a Precedent was shewn, where in Debt for Rent, a Plaintiff declared upon a Lease made, yielding Rent at *Michaelmas* and the *Annunciation*, or within twelve Days after every of the said Feasts; and demanded the Rent due at *Michaelmas* last past, not mentioning the twelfth Day after; the Plaintiff here had Judgment: And it was said, that the Reservation being *durante Termino*, at *Michaelmas*, or within ten Days, this Election is gone at the last Feast, because the Term is expired. *Cro. Jac.* 233.

If a Lease is for Years, paying a yearly Rent at *Michaelmas* and *Lady-day*, or within twelve Days after each of the said Feasts; upon Condition that if the Rent be not paid by the said Space of twelve Days next after either of the said Feasts, or Days of Payment as aforesaid, then the Lease shall be void; in this Case, it is held that the Lessee in Safeguard of his Lease, shall have twelve Days after the said twelve Days, to pay his Rent; for when the Rent is not paid on the first Day, it is as much as if it had been reserved upon the twelfth Day after: But if the Clause in the Lease were, that if the Rent be behind for the Space of twelve Days, after either of the said Feast-days of Payment, the Lease to be void, &c. there the Tenant hath but the twelve Days allowed him. 10 *Rep.* 129. 4 *Rep.* 27.

Where a Tenant for Life lets a Lease for Years of Land, if he shall so long live, under a certain Rent, and the Tenant for Life dieth before a Quarter-day, or Day of Payment, by the Common Law the Tenant is discharged of the Rent for that

Quarter by the Act of God: Though this may be guarded against by dividing the Rent, and making it payable Weekly, &c. altho' it be not usually received otherwise than quarterly; or by Covenant in the Lease, to oblige the Tenant to pay the Executors of the Lessor for so much of the Profits as shall be received 'till his Death, if he die before any Day of Payment. And without this Care, the Tenant might formerly receive the Profits of the Lands, and detain the Rent too, by quitting the Estate upon the Death of the Landlord, who did not live 'till the Rent-day; and thereby barring those in Remainder and Reversion, &c. of the Rent, because he was not their Tenant at the Day of Payment of the said Rent. 10 Rep. 127.

This Law is now altered by Statute; for if any Tenant for Life die on the Day, on which Rent was made payable upon any Lease determinable at his Death, his Executors, &c. may in an Action of the Case recover from the Under-tenants, the Whole; or if he die before such Day, a due Proportion of such Rent: And where Demises are not by Deed, Landlords may recover reasonable Satisfaction, in an Action on the Case, for the Use of what the Tenants held, &c. And if any Tenant holding Lands at a Rack-rent, being in arrear one Year's Rent, shall desert and leave the same uncultivated or unoccupied; two Justices of Peace, may at the Request of the Landlord go upon and view the Premises, and fix on the most notorious Part thereof, a Notice in Writing upon what Day (at the Distance of fourteen Days) they will take a second View; and if the Tenant, or some Person for him, do not then pay the Rent, and there is no Distress, the Tenant's Lease shall become void: But the two Justices Proceedings may be examined into in a summary Way, by the next Justices of Assise

208 Of Estates for Life, and

Affise of the County ; who if they see Cause, may award Restitution and Costs to the Tenant, &c. *Stat. 11 Geo. 2. cap. 19.*

An Action of Debt lies for Rent in arrear upon a Lease for Life or Years ; at Common Law it lay not on Leases for Life, but it may be brought by the Statute 8 *Ann. cap. 17.* If Tenants for Life or Years hold over Lands, after the Determination of their Terms, and Demand being made to deliver Possession, they shall pay double the yearly Value, to be recovered by Action of Debt : Also in Case a Tenant gives Notice of his quitting the Premisses, and do not accordingly deliver up Possession at the Time notified ; he is thenceforth to pay double Rent, recoverable as single Rent. And when Half a Year's Rent is due from any Tenant, and no sufficient Distress can be had on the Premisses, the Landlord may serve a Declaration in Ejectment, and have Judgment, &c. but the Tenant may file his Bill in Equity, within six Months, to be relieved ; and paying the Rent due, and Costs, all Proceedings to cease, &c. 4 *Geo. 2. cap. 28.* and 11 *Geo. 2.*

Debt may be brought for Part of Rent due, and a Distress taken for the other Part thereof : Action of Debt lieth for Rent due for a Copyhold and Freehold together ; also for Rent upon a Lease of Land, and a Flock of Sheep, &c. An Assignee of Rent on a Lease for Years, shall have Debt for it : And Lands leased, shall be subject to those lawful Remedies which the Lessor provides for the Recovery of his Rent, Possession, &c. into whose Hands soever the Land comes. If a Rent upon a Lease for Years of Land is reserved and made payable at four Quarter-days, the Lessor may have Action of Debt after the first Day of Failure ; for every Quarter's Rent is a several Debt, and distinct

Years, Leases, Covenants, &c. 209

Actions may be had for each Quarter, and it is not like Debt for Part of the Money on a Contract. 3 *Lev.* 39, 150. *Cro. Jac.* 300. 5 *Rep.* 81. 2 *Ventr.* 129.

But if one leaseth a Stock of Cattle, or other Personal Goods, and the Rent is to be paid at several Days, the Lessor must stay 'till all the Days are expired; because it is all but one Personal Contract. An Action was for one Quarter's Rent, when two Quarters were due, so that the Plaintiff sued for less than was due to him, without shewing how the Rest was satisfied; it was here objected, that the Law would not allow this, but adjudged good on a Demurrer, every Quarter being a several Debt: But it would be otherwise, if it appears by the Plaintiff's own shewing that Rent for a whole Year is due, and he brings an Action only for Half a Year, &c. In Debt for Rent, the Plaintiff demands more in his Declaration than due, he may remit Part, and have Judgment for the Residue. 1 *Inst.* 292. 2 *Ventr.* 129. 3 *Nels. Abr.* 117. 2 *Lill.* 429.

Rent being properly for the Use of a real Thing, as of Land, or a House unfurnished, &c. the Remedy for which is Action of Debt; not only the Consideration, but the express Promise to pay, is to be proved in such Action. But where any Part of a House, is let with Goods and Furniture, it is called *Hiring of Lodgings*, the Furniture being the more valuable Part; and in Intendment of Law, the Money is supposed to be paid for it, as a Personal Thing; therefore in an Action of the Case, Proof of the Consideration is sufficient, without an actual Promise, which is presumed. 3 *Lev.* 150. 1 *Lev.* 179. *Sid.* 279. 3 *Mod.* 73.

210 Of Estates for Life, and

If Tenant in Fee, or in Tail die, his Executors may have Action of Debt by Stat. 32 H. 8. for the Rent in arrear, or he may distrain for it; but before this Act, the Executor had no Remedy at Law: In case Tenant for Life dies, his Executor may bring Debt for Rent in arrear; and this was his Remedy by the Common Law; but a new Remedy is given by this Statute, and that is to distrain: Though if there be a Grantee of a Rent for twenty Years, if he so long live, and there is Rent due and in arrear, and then the Grantee dies; his Executor cannot distrain for the Arrears within the Statute, but must keep to his Remedy at Common Law. 1 Cro. 471. 3 Salk. 303, 304.

Rent is reserved out of the Profits of Land, and is said not to be due 'till they are taken by the Tenant; but the Profits of the Land, which are the Thing it self, cannot be reserved as Rent. It ought to be reserv'd out of Lands or Tenements; and may not be granted out of any incorporeal Inheritance, as an Advowson, Common, Office, Tithes, Markets, Liberties, &c. But if a Lease be made of these for Years, the Reservation of the Rent may be good by Way of Contract, to have Action of Debt for it, but the Lessor cannot distrain; neither shall it pass with the Reversion. A Grant of a Rent out of a Hundred, is void; the Rent cannot issue thereout, nor doth an Assise lie for it: And a Fair, is but a Franchise, out of which a Rent may not be. 1 Inst. 142, 47, 206. 5 Rep. 3, 4.

A Man seised in Fee of Lands, lets them for Years, and reserves a Rent to himself, not to him and his Heirs, the Rent shall determine by his Death, if he dies within the Term: But if he reserve a Rent generally, without shewing to whom it shall go, it shall go to his Heirs. If the Lessor reserve

Years, Leases, Covenants, &c. 211

reserve Rent to him and his Assigns, this Rent determines by his Death, because the Reservation is good but during his Life: So if he reserves a Rent to him and his Executors, it shall end by his Death, unless the Rent be reserved during the Term; by Reason the Heir hath the Reversion, to which the Rent is incident. If a Lease be made for Years of Land, rendring Rent to the Lessor, his Executors, Administrators and Assigns, during the Term; yet the Law will dispose of it to the Heir, because the Rent comes in Lieu of the Land, and issues out of it, and that otherwise had descended to the Heir. 1 *Inst.* 47, 396, 397.

If a Lease for Years, or Life, or Gift in Tail, be made to one, with Reservation of Rent; and the Lessor or Donor grant the Reversion over to another, the Rent passeth to the Grantee, altho' no Mention be made of it in the Grant, the Rent being incident to the Reversion: But though a Rent be thus incident to the Reversion, it is not inseparably Incident; for the Reversion may be granted, so as not to pass the Rent. A Rent may be reserved out of a Reversion or Remainder of Lands; for the apparent Possibility that they may come in Possession: But not to one in Remainder, tho' to a Reversioner it may. If the Reservation of a Rent be to the Lessor, his Heirs and Assigns, all the Assigns of the Reversion shall enjoy the same, if it be incident to the Inheritance. 1 *Inst.* 143, 317. *Cro. Eliz.* 792.

There are several Kinds of Rents in our Law, as a *Rack-Rent*, *Quit-Rent*, *Fee-farm Rent*, *old Rent*, and *improv'd Rent*, &c. But the common Division of Rents is into three Sorts; viz. *Rent-Service*, *Rent-Charge*, and *Rent-Seck*: *Rent-Service*, is accompanied with some corporeal Service, as Fealty, &c. And is where a Man makes a Gift

in Tail, or a Lease for Life, or Years, and reserves to himself a certain Rent, while the Reversion of the Land continues in him; and if this Rent be behind at the Day on which it ought to be paid, the Lessor by Law may take a Distress for it, without any particular Covenant; tho' it be usual to add such Clause. *Rent-Charge*, is when a Person by Deed maketh his Estate over to another in Fee, or by Gift in Tail, the Remainder in Fee, or a Lease for Life, Remainder over, &c. So that his whole Estate passeth, and by the same Deed reserveth to him and his Heirs a certain Rent; and covenanteth that if the Rent be behind, it shall be lawful for him and his Heirs to distrain, here the Lands are charged with Distress by the Deed. *Rent-Seck*, is where a Man passeth his Estate by Deed to another, and reserves to him and his Heirs a certain Rent; or granteth a Rent issuing out of an Estate, without any Provision of Clause of Distress, for which he cannot distrain, there being no Reversion or particular Charge to enable him, &c. *Litt. Sect.* 213, 217, 218.

If one seised of Land, grants by Deed an yearly Rent issuing out of it to another in Fee, Fee-tail, for Life, or Years, with Clause of Distress, it is a Rent-Charge; so that a Rent-Charge may be either by Reservation or Grant: And of what Nature soever it be, it is grantable over; and a Rent is not a Thing meerly in Action. The Difference between a Rent-Charge and a Rent-Seck is, that there is a Clause of Distress annexed to one, and no such Clause to the other; and therefore the one is a Charge upon the Land, but for the other the Grantee had formerly no Remedy but to charge the Person of the Grantor in a Writ of Annuity; and he must have Seisin of the Rent, which is to be created by Grant, and not by Devise; also the first

Years, Leases, Covenants, &c. 213

first Payment that gives Life to the Rent-Seck, ought to be made by the Tenant of the Freehold; and he should attorn, or he cannot have Assise. 1 *Inst.* 143. 6 *Rep.* 56. All Persons may have now the like Remedy by Distress, &c. for Rents Seck, and Chief Rents, as for Rents reserved on Lease, by the late Statute 4 *Geo. 2. cap.* 28.

Besides the Rents before-mentioned; there is a Rent reserved upon a Lease at Will, called a *Rent distrainable of common Right*. And Rent on a Lease at Will, is due only by Occupation; but on a Lease for Years, the Rent is due on the Contract, and if the Lessee never enters, he must pay the Rent. Also a Man may have a *Rent* by *Prescription*; and there are Rents, but not properly so called, reserved by Contract or Deed, which created them with Clause of Distress without a Tenure, against the natural Course of the Law: In all Cases, by late Statutes, a Landlord may distrain for his Rent upon any Contract for it. 1 *Inst.* 144, 213. 6 *Rep.* 58. 1 *Salk.* 209. *Wood's Inst.* 185, 598.

When there is Remedy at Law for Rent, Equity will not grant one; nor will it change the Nature of the Rent, so as to make the Person liable, unless there was Fraud, &c. in preventing a Distress: And where the Party hath provided his Means by Distress, for recovering a Rent Charge, &c. he must be satisfied with it: But in another Case, it was held, that the Party should enter, and enjoy 'till the Arrears, with Costs were paid. 2 *Vern.* 382, 386. 1 *Chan. Cas.* 185.

One intire Rent cannot be partly a Rent-Charge and partly Rent-Seck; therefore if a Rent be granted out of three Acres, with Clause of Distress for the Whole in one of them only, this is a Rent-Seck for the Whole. Where Rent is granted to A. in Fee, with a Distress for Life, this is a Rent-

214 **Of Estates for Life, and**

Charge during his Life, and a Rent-Seck after ; but if the Distress be granted but for Years, it is not a Rent-Charge at all. And if a Rent be granted for Life, out of a Term for Years, and an Estate in Fee, with Clause of Distress in the Whole ; this Rent being a Freehold, shall issue only out of the Freehold, and the Term is only charged with a Distress: But if it had been granted out of the Term alone, it should have issued out of such Term, and the Lands would have been charged during the Term for Years, if the Grantee had lived so long. 1 *Inst.* 147. *Plowd.* 524. 1 *Cro.* 183.

If a Man seised of two Acres of Land, of one in Tail, and the other in Fee, grant a Rent out of both, and die ; and the Acre in Tail descends to the Issue, the whole Rent-Charge shall issue out of the other Acre: So if one grant a Rent out of two Acres, and afterwards one of them is evicted, the Whole shall be issuing out of the other Acre ; for the Acre which is evicted is absolutely discharged from the Rent ; and the Grantor shall not, to avoid his own Grant in the Whole, or in Part, take Advantage of the Weakness of his own Estate. But if a Person seised of one Acre in Tail, and another in Fee, make a Lease of both reserving Rent, and then die, and the Lease of the Acre in Tail be avoided by the Issue, the Rent shall be apportioned: And where a Man makes a Lease of two Acres, reserving a Rent, on Condition that the Lessee shall have Fee in one of them upon doing such an Act ; if the Lessee performs the Condition, the Rent shall be *apportioned*, because it is incident to the Reversion, yet by Relation the Lessee has the Fee-simple from the Beginning. 1 *Inst.* 148. *Dyer* 56, 82.

Years, Leases, Covenants, &c. 215

A Lease is made of three Acres of Land of equal Value, paying such a Rent, and afterwards the Lessor grants the Reversion of one Acre to another, the Grantee shall have the proportionable Rent; for tho'tis but one Lease and one Rent, yet as the Reversion is severable the Rent shall attend upon it and be likewise severable. Though in a Lease of a Warren which extended into three Vills, where the Lessor granted the Reversion of that Part which lay in one of the Vills to another, and the Lessee attorn'd; it was adjudged, that the Grantee should not have any Part of the Rent, nor the Grantor neither, because an intire Contract cannot be apportioned, and therefore the Rent is determined. 8 Rep. Moor 115.

Where a Man hath a Rent-Service issuing out of Land, and he purchaseth Part of the Land, the Rent shall be apportioned with Respect to the Value of the Lands: And if a Stranger recovers Part of the Lands, a Lessee shall pay, having Regard to that recovered, and what remains in his Hands. If Lessee for Life or Years under Rent, surrenders Part of the Land, the Rent is to be apportioned: But a Rent-Charge may not be commonly apportioned; nor shall Things intire, as if one hold Lands by Service to pay yearly to the Lord, at such a Feast, a Horse, &c. If Part of the Land out of which a Rent-Charge issues, descends to the Grantee of the Rent, there shall be an Apportionment of it: Though where the Grantee of a Rent-Charge purchases Part of the Land, there all is extinct. 1 Inst. 148, 149. Moor 231. 1 Danv. Abr. 507.

A Grantee of a Rent releases Part of the Rent to the Grantor, this doth not extinguish the Residue, but it shall be apportioned; for the Grantee dealeth not with the Land, only the Rent. As to

216 Of Estates for Life, and

the *Extinguishment* of Rent, where a Man hath a Rent or Service that issues out of Land, and he purchases the Land out of which it ariseth, thereby the Rent is extinct and gone: For no Man can have a Rent going out of his own Land in Possession; but a Man must have as high an Estate in the Land, as in the Rent, or the Rent will not be extinguished. A perpetual Union of the Tenancy to the Rent, or Rent to the Tenancy, is an Extinguishment of the Rent. 1 *Inst.* 147. *Vaugh.* 39.

Where a Lease was granted to one for 100 Years, and the Lessee made a Lease for twenty Years, rendring Rent; afterwards this same Lessee or Grantee purchased the Reversion in Fee of the first Term: And it was adjudged, that he should not have the Rent on his Lease, because the Reversion of the Term for Years to which it was incident, is extinguished by the Reversion in Fee, both being in one Person. A Person has a Lease for Years, and after buys the Property of the Land; this is a Consolidation of the Property and Fruits, and is an Extinguishment of the Lease: But if a Man have an Estate in Lands but for Life or Years, and hath a higher Estate as a Fee-simple in the Rent; the Rent is not extinguished, but in Suspence for a Time: For after the Term, the Rent shall revive. But in Case a Personal Thing be once suspended, by the Act of the Party, it is extinguished for ever. *Moor* 94. 2 *Nels. Abr.* 821. *Terms de Ley* 327. *Dyer* 140.

A Rent may be *suspended* by Unity for a Time; and if a Lessor doth any Thing which amounts to an Entry on the Land, tho' he presently depart, yet the Possession is in him sufficient to suspend the Rent, until the Lessee do some Act amounting to a Re-entry. Entry into Part of the Land leased, is

a Suspension of the whole Rent, and if the Lessee re-enter, the Rent is revived: But the Taking away any Part of a Thing demised, is not an Entry, but Trespass; of which the Lessee may take Advantage by Action, but not as a Suspension of the Rent. An Eviction of the Land leased by an elder Title, extinguishes the Rent; for the Rent was only payable for the Use of the Land. But if a Lease be made of Houses, &c. and they are destroyed or damaged by the Inroad of Enemies, the Rent being paid for the Use of the Thing demised, it shall here be apportioned. *Vaugh.* 39, 109. *Hob.* 326. *T. Jones* 148. *Dyer* 56. 1 *Inst.* 28.

Demand and Tender.

If no Place is appointed for Payment of Rent, the Law appoints it to be upon the Land; and *Demand* of Rent is also generally to be on the Land, &c. It must be made on the most notorious and publick Part of a House or Land; as at the Fore-door of the House, the Gate or Stile upon some Way going through the Lands, &c. If the Rent be demanded at a Place not the most notorious, and in Pleading a Demand be alledged at the House, the Demand may be traversed, for it was void: And the Time of Demand appointed by Law, is such a convenient Time before the Sun-setting of the last Day of Payment, that the Money may be numbered and received. In case the Lessee tender the Rent to the Lessor upon any Part of the Land at any Time of the Day, and the Lessor refuse to receive it, he shall not take Advantage of any Demand for the Rent on that Day. 4 *Rep.* 72. 1 *Inst.* 201.

If

218 Of Estates for Life, and

If a Rent be reserved at four Feasts, and that for Default of Payment on Demand it shall be lawful to distrain; a Demand in such Case made after the Days, is good to enable him to distrain; but where a Re-entry is reserved for Non-payment of Rent upon Demand, on such a Day, there the Demand must be made on the very Day. And there can be no Re-entry for Non-payment of Rent without a Demand upon the Land; for the Land is the principal Debtor, and the Rent issues out of it, and in an Affise for the Rent, the Land shall be put in View. But if a Rent is made payable at a certain Place off from the Land, there needs no Demand of the Rent on the Lands for the Re-entry; but it ought to be made at the Place appointed for Payment thereof. 1 *Inst.* 201, 144. 4 *Rep.* 13.

A Lease with Condition to be void, on Non-payment of Rent, is not void, unless the Rent be demanded, and then an Entry made, &c. And in Demand of Rent for a Re-entry, it must be exactly observ'd; for if the Lessor demands one Penny more or less than due, or in his Demand doth not shew the Certainty of the Rent, the Day of Payment, and for what Time due, the Demand is not good: In making the Demand, the Lessor, or some other Person by his Direction, is to come upon the Place at the Time when the Demand is to be made, and there in the Presence of Witnesses he must make an actual and verbal Demand of the Rent due; and after he is to continue there till it is dark, that he cannot see to tell the Money. And if the Money thus demanded is not paid, this is a Denial in Law, tho' there are no Words of Denial; upon which the Lessor may re-enter, or have an Affise. *Hob.* 69, 331. 1 *Leon.* 425. *Cro. Eliz.* 209. *Plowd.* 70.

Where

Pears, Leases, Covenants, &c. 219

Where Rent is to be paid on the Land, there the Lessor must do the first Act, *i. e.* demand it before the Lessee is bound to pay it: And if it were to be paid at any other Place, then the Lessee is obliged to do the first Act, that is, to tender the Rent at his Peril; tho' it is safest for both to do their Parts herein. A Demand of the Rent upon the Premises is sufficient without a personal Demand; and Demand for Rent must be made, tho' the Tenant or any for him be not there to pay it. If Rent is to be paid at *Easter*, and the Day be past, and the Rent not paid nor demanded at the Day; and the Landlord demand it after the Day, this is not a good Demand, except he meet with the Tenant upon some Part of the Land, and there demand it: But the Landlord may be on the Land the next Day of Payment, and then demand the Rent and Arrearages; and if no Body tender it, it is a Denial, on which he may bring an *Affise*, and therein he shall recover the Rent, Arrearages, and Costs and Damages. *Dyer* 329, 51. 29 *Affis.* 52. 1 *Inst.* 153. 10 *Rep.* 129. *Litt.* 233. 7 *Rep.* 28.

In Case a Man leases Lands by Indenture for Years, reserving a Rent payable at certain Days, and the Lessee covenants to pay the Rent at the Days limited; the Lessor is intitled to his Rent, without making any Demand, for the Lessee is bound to pay the same at the Days, by Force of his Covenant, and otherwise it is a Breach of the Covenant: Though if a Lessor makes a Lease rendering Rent, and the Lessee covenants to pay the Rent, being lawfully demanded, the Lessee is not bound to pay the said Rent, without a Demand: And if a Man reserves a Rent, and there is a Covenant or Condition that if the Rent be arrear, the Lessee shall forfeit so much by way of *Nomine Pœna*, or in any such like Manner; the Penalty shall

220 **Of Estates for Life, and**

shall not be forfeited and paid without Demand made. 2 *Danv. Abr.* 100, 101, 102. *Hob.* 133. 1 *Brownl.* 179.

If the Lessor demands the Rent at the Day, and then dies, his Heir may enter, for he shall take Advantage of it. And if two Persons make a Lease, rendring Rent on Condition, that if it be behind and unpaid to them, they shall re-enter, and one of them die, and the Survivor demand it, 'tis a good Demand of the Rent: So where a Lease is made to two, and one dies, and the Rent is demanded of the Survivor of them. *Noy* 97. *Dyer* 207.

When the Lessee hath two Times given to him for Payment of his Rent, as where the Lease is yielding and paying Rent at *Michaelmas*, or within twelve Days after; here Demand must be made on *Michaelmas* Day, and the last of the twelve Days: Tho' the Lessee may tender the Rent the last Part of either of the Days, and be good; and if he tender it the first Day, and the Lessor be not there, and he tenders it not the last Day, and then the Lessor demands it, he cannot re-enter. If a Rent be to be paid at one of two Days appointed, and the Lessee pay the Rent on either Day, 'tis sufficient: It is the same if it be made payable in one of two Places, the Tender or Payment in either is good; but the Lessor must demand it in both Places. 10 *Rep.* 129. 1 *Inst.* 202.

A Tender of Rent must be of the whole Rent due, without any Deduction of Taxes or other Payments; unless it be so agreed, &c. Stoppage being no Payment: And when Rent is tendered, the Landlord may after bring Action of Debt for it, tho' he cannot recover any Damages; the Tenant's being ready to pay excuses the Damages, but doth not debar the other of his Rent: Tho' if one
tenders

tenders Rent at the Day, and he be after sued for it, he need not tender it again in Court. Tender of Money for Rent, &c. may be in Bags, without shewing or telling it, if it can be proved there was the Sum to be tendered; for it is the Duty of him that receives to put out and tell it: But where a Person held the Money on his Arm in a Bag, at the Time of offering it; this was held no good Tender, because it might be Counters or base Money. A Tender made of more than due is good; and the Party to whom offered ought to take out what belongs to him. 1 *Inst.* 208. *Litt. Rep.* 33. 3 *Salk.* 344. *Bro. Tend.* 6. 5 *Rep.* 114, 115. *Noy* 74. 3 *Nelf. Abr.* 281.

Where the Tender is made out of the Land to the Person of the Lessor, when the Rent is to be paid upon the Land, it is not good; and a Tender after the Days of Payment are past, will not be good: So a Tender in any secret Place, where there are more notorious Places amongst the Lands out of which the Rent doth issue, is not good in Law: But if the Lessor will accept it at any other Place before the last Day of Payment, then 'tis good enough. If the Lessee tender in Word, or talk of Rent, and doth not shew it, this is not good; but he must prove he had and tendered so much Money as the Rent is. As to Conditions for Payment of Sums in Gross, touching Lands or Tenements, Tender on the Land is not good, if the Party be not there to receive it; but if lawful Tender be once refused, he who ought to tender the Money is discharged for ever afterwards. *Plowd.* 711. *Bro. Tend.* 11. *Litt. Sect.* 338, 341. 1 *Inst.* 209.

That is a good Tender, which is made with all the Circumstances and Regard of Time and Place as before mentioned: To which may be added, that
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222 Of Estates for Life, and

in general the Law will not make the Lessor to attend, then and there to demand his Rent, when and where it doth not enjoin the Lessee to tender it; neither shall the Lessee have Liberty to tender any where or Time, but when or where the Lessor is bound to wait to demand the same. Therefore most of the Questions concerning Tender, are answered under *Demand*, as before is set forth. *Bro. Tend.* 23. 1 *Inst.* 211.

There is this Difference with respect to Tender of Rent; that Tender upon the Land, before Distress for Rent, makes the Distress wrongful; Tender after the Distress, and before the Impounding, makes the Detainer, and not the Taking unlawful; but Tender after impounding, makes neither the one nor the other wrongful: The Tender in this last Case comes too late; as will likewise a Tender of Amends in Trespass, after a Suit commenced; for then the Cause is put to the Trial of the Law, to be there determined. But after the Law hath decided it, and the Avowant has Return of the Cattle or Goods, if the Plaintiff make him a sufficient Tender, he may have an Action of Detinue for the Detainer after; or he may upon Satisfaction made in Court, have a Writ for the Redelivery of his Goods. 8 *Rep.* 147. *Bro. Tend.* 18. 2 *Sid.* 40. 2 *Roll.* 561. 2 *Inst.* 107.

Of a Rent-Service there are several Causes of *Disseisin*; as Rescous of a Distress taken, for the Rent behind; the resisting or hindering the Lord in taking a Distress; Inclosure of the Land, because the Lord cannot break down the Inclosures to come upon the Land to distrain; and when the Tenant meets the Lord or Grantee going to distrain for, or demand the Rent, and menaces them in such a Manner, that they dare not go to the Land for fear of bodily Hurt. And for a Rent-
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Charge,

Years, Leases, Covenants, &c. 223

Charge, Denial of the Rent, is also a Disseisin of it; but not for a Rent-Service, tho' there may be a Distress for this, as well as the other: And where our Books say that Detainer of a Rent-Charge is a Disseisin, it must be intended upon a Demand thereof. 1 *Inst.* 160, 153. 2 *Danv. Abr.* 624.

Where any Person is disturb'd from entering on Land, or one unlawfully enters thereon; or a Tenant is forcibly hindered from Tilling his Lands, these are Disseisins of the Land: But if Lessee for Years is ousted by his Lessor, &c. 'tis no Disseisin; and if such Lessee holds over his Term, he is not a Disseisor. If a Man enters on another's Lands, claiming a Lease for Years, when he hath no Lease, he is a Disseisor; tho' if a Man enter into the House of another by his Sufferance, without claiming any Thing, it will be no Disseisin: And if one enters wrongfully into the Lands of another Person, and he accepts Rent from him, he shall not afterwards be taken for a Disseisor. 1 *Inst.* 153. *Cro. Jac.* 678. 2 *Danv.* 625, 631. *Dyer* 173.

If Tenant for Years surrenders to the Lessor, and yet remains in Possession, paying his Rent to the Lessor, this is no Disseisin to the Lessor but at his Pleasure. A Lessee at Will makes a Lease for Years, it is a Disseisin, at the Election of the Lessor at Will. If a Person enters upon Land by Virtue of a Grant or Lease, that is void in Law, 'tis a Disseisin; for then it is as if no such Lease or Grant had been made: But if a Man be seised of Lands in Fee, and a Stranger doth enter upon him, by Colour of a Lease for Years which is void, and pays the Rent to him; this is not any Disseisin at Election, for if the Lessor covenants to stand seised after to the Use of himself in Tail, the Estate will well arise. *Dyer* 62. 1 *Roll. Abr.* 730. 2 *Danv. Abr.* 629, 630.

Covenants.

Covenants.

The *Covenants* in Leases, are usually for the Payment of Rent; for repairing the Premises; and for quiet Enjoyment, &c. And if a Man demise Lands to another by Lease, the Law intends a Covenant that he shall peaceably enjoy the same; by this Covenant in Law, the Lessee is to hold his Lease against the lawful Entry, Eviction, or Interruption of any Man; but neither this nor the express Covenant for Enjoyment, extends to tortious Acts and Entries, &c. because for tortious Acts the Lessee hath a proper Remedy against the Wrong-doers: And it is the same on a Deed Poll, as a Deed indented. But if a Man covenant for the quiet Enjoyment against a particular Person, that Covenant shall extend to the tortious as well as legal Entries of such particular Person. 1 *Inst.* 384. *Vaugh.* 118, 123.

If a Person covenants to pay Rent, and it happens that the Lands are overflowed with Water, he is still chargeable with the Rent, because he might have provided against this Accident by his Contract; and tho' there was no Covenant in the Lease to pay the Rent, the Reservation is a Covenant in Law, and a Duty is created by it, and the Law will not protect the Lessee against his own Covenant. In Case Lands let by Lease are charged with a Rent-Charge, and the Lessor covenants with the Lessee to save him harmless therefrom; if afterwards the Lessee pays the Rent to the Grantee of the Rent-Charge, voluntarily and without Compulsion: By *Holt C. J.* in such Case, he pays it in his own Wrong, and must pay it again to the Lessor; but if he be distrained for the Rent-Charge, and his Goods are taken, whereby he is compelled

pelled to pay the Rent, it is otherwise. *Style* 47.
3 *Salk.* 109.

An Action of Debt was brought for Rent, reserved upon a Lease for Years; and the Defendant the Lessee gave in Evidence for Part of the Rent, that the Lessor the Plaintiff was by Covenant to repair the House, and did not, and that thereupon he expended Part of the Rent in repairing the House: Here one Judge held, that the Law giveth this Liberty to the Lessee to expend the Rent in Reparations; for the House may fall on his Head before it be repaired, and therefore the Law alloweth him to repair, and recoup the Rent. But another Judge was of Opinion, that it was no Evidence; for if the Lessor will not repair it, the Lessee is to bring Covenant against him: And a third Justice said, he might well expend the Rent in Reparations, but he ought to have pleaded it, and cannot give it in Evidence. Then as to the Residue of the Rent, the Lessee shewed that he had paid it to others who had Rent-Charges out of the Lands, which the Lessor had covenanted to pay, and that by the Commandment of the Lessor he had paid the Rent in Discharge of the Rent-Charges; and this was clearly held good; for Payment to another by the Plaintiff's Appointment, is Payment to himself. *Cro. Eliz.* 222. 1 *Leon.* 237.

A House being let by Lease to a Lessee for Years, the Lessee covenants, that from and after the Amendment and Reparation of the said Messuage by the Lessor, his Heirs and Assigns, he the Lessee at his own Charges will keep and leave the same in Repair: It was adjudg'd in this Case, that the Lessee is not bound to the Repairs, unless the Lessor first make good the Reparations; and if the House be in good Reparation at first, if afterwards during the Term it happen to be in Decay, the

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Lessor

226 Of Estates for Life, and

Lessor is first to repair it, by this Covenant, before the Lessee is obliged thereto: For it is a conditional Covenant, that the Lessor ought first to repair the same. *Cro. Jac.* 645.

As Covenants are made by express Words with the Lessor, his Heirs and Assigns, the Assigns on these Covenants may maintain an Action: And tho' the House became ruinous before their Interest commenced, yet if the Covenant be to repair within four Months, or any such like Time after View and Notice of the want of Repairs; if the Assignee give the Notice to the Termor, and he do not repair the Premises, such Assignee may have Action of Covenant to oblige him to do it, &c. But by the Common Law, this Action doth not lie, if there has been a Recovery on that Point, notwithstanding the Decay and Want of Reparation be after that Recovery; for by *Manwood* Just. that Covenant is extinct. Tho' if Covenants perpetual are once broken, and an Action is brought, wherein the Plaintiff recovers; upon a new Breach a *Scire facias* shall be had on that Judgment, and the Plaintiff need not bring a new Writ of Covenant. 3 *Cro.* 24. 1 *Leon.* 62. 3 *Leon.* 51. *Cro. Eliz.* 5.

And by Statute, in an Action on Bond for Performance of Covenants, the Plaintiff may assign or lay as many Breaches as he pleases, and the Jury shall assess Damages and Costs for such Covenants as are proved to be broken: And where Judgment shall be given for the Plaintiff in the Action on a Demurrer, *Nil dicit*, &c. he may suggest on the Roll what Breaches he thinks fit; upon which a Writ of Inquiry shall go, &c. And if before Execution executed, the Defendant brings the Costs and Damages into Court, Execution shall be stayed; and the Plaintiff shall acknowledge Satisfaction, if the

the Execution be executed: But the Judgment shall still stand as a Security to answer the future Breach of any Covenant in the Deed; for which the Plaintiff or his Executors, &c. may have a *Scire facias* upon such Judgment against the Defendant. It has been observed, that on Bonds for performing Covenants, if they are sued the Jury must find the Penalty; but on Covenant for Performance, only the Damages. *Stat. 8 & 9 W. 3. c. 10. Wood's Inst. 250.*

If a Man makes a Lease of Lands, in which are divers Covenants to be perform'd by the Lessee; and after the Lessee doth covenant, that if any of the Covenants are broken, the Lessor shall enter upon the Land demised, and hold it till the Lessee make him Amends, &c. it is good, and the Lessor may take Advantage thereof: Tho' no Duty nor Cause of Action arises on a Covenant, until it is broken; and as to Breaches of Covenant, if a Person by his own Act disables himself to perform a Covenant, it is a Breach of it. *Fitzherb. Coven. 3. 5 Rep. 21.*

A Person covenants to do any Thing, his Heir shall not be bound, unless named: But in Covenants of Lessees with Lessors to repair, &c. tho' Executors are only named, and not the Heir, yet he shall bring Covenant, because they are Covenants that run with the Land: Also the Grantees of Reversions, have the like Advantage against Termors, by Action of Covenant, as Lessors and their Heirs, &c. If Lessee for Term of Years rendring Rent, covenants for him and his Assigns to repair a House, and after the Lessee assigns over the Term, and the Lessor accepts the Rent from the Assignee, and then the Covenant is broke; here Action of Covenant lies against the first Lessee on his exprels Covenant to repair, which is a personal

228 Of Estates for Life, and

Covenant that cannot be transferred by accepting the Rent. 5 Rep. 8. 2 Lev. 92. 32 H. 8. 2 Danv. Abr. 240.

Not only Parties to Leases and Deeds, but their Executors and Administrators, and every Assignee of the Land, shall take Advantage of inherent Covenants, altho' not named; and Executors and Assigns, and their Executors, are bound by such Covenants, tho' not named; as a Covenant to repair the Premises, &c. But if the Covenant be for a Thing not in Being at the Time of the Demise, as to make a new Wall, or the like, the Assignee is not bound, if he be not named in expresse Words; nor is he when named, if the Thing to be done doth not concern the Thing granted by the Lease, or in personal Contracts, &c. Assignees of Lands shall not have an Action upon Breach of any Covenant, generally before their Time: And an Assignee may not be charged in a Writ of Covenant for any Breach, after the Death of the first Lessee; as it is Personal to the Lessee himself. 5 Rep. 16. 1 Cro. 552. 1 Roll. Abr. 915, 916. Cro. Eliz. 863. 2 Danv. 238.

If one covenant for the Reparation of a House, upon the Request of the Lessor or Landlord, and he repairs without it; this is no Performance of the Covenant. Where the Lessee covenants expressly to repair the House let to him, and it is burnt down by Lightning, or any other Accident, yet he ought to repair the same, or Action of Covenant will lie against him; for it was in his Power to have guarded against it, by excepting such Casualties, &c. But he is not so bound by Covenant in Law: And when Houses are blown down by Tempest, the Law excuses the Lessee in Action of Waste; tho' in a Covenant to repair and uphold,
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Years, Leases, Covenants, &c. 229

it will not. 2 Leon. 53. Alleyn 26. 1 Lill. Abr. 349. 1 Plowd. 29.

Waste.

It is *Waste* in Tenants to suffer Houses to be uncover'd or in Decay, tho' there be no Wood upon the Premises to repair them: So it is if the Lessee permit his House to be burnt by Negligence, &c. But where a House is destroy'd by Thunder, Lightning, Tempests, Floods, Enemies, &c. without any Concurrence or Possibility of the Lessee's preventing the same, 'tis no Waste in the Lessee. If the House was not covered when the Tenant entered, it is not Waste in a Tenant to suffer it to fall down: Tho' if he builds a new House, it is; and if he suffers it to be wasted, it will be a new Waste. 1 Inst. 52, 53. 2 Inst. 145. Kelw. 87.

In respect to the Cause of Waste, it is divided into permissive, as if the Tenant or Lessee suffer any Waste to be done; or for want of necessary Repairs, permit a House to fall; or actual, as where he commits some Act, by which it is done: And with respect to the Things wasted, it is then either in Houses, Lands, Woods, Gardens, &c. But the using any Thing for and in its proper and natural Use, as a House to live in, can never be called Waste, however the same may by such Use in Process of Time be impaired or decay'd; and in general all Detriment or Impairment of a Thing, out of its natural and proper Use, is Waste: Tho' it must be done by the Tenant whilst he is Tenant; for Acts done before the Term begun, or after it is ended, are Trespasses, not Waste. And it is said, if a Lease be made, excepting the Wood and Tim-

ber, Action of Waste will not lie for it; for it was not demised or let to the Tenant. *Dyer* 19, 37.

The suffering a House, at the Time the Tenant comes in, that is new built, to be uncovered, is no Waste; but if the House were covered at the Time the Tenant came in, and during the Term he uncovers it; if thereby the essential Parts of the Building, as the Timber, &c. becomes rotten or putrified, it is Waste, otherwise not. The pulling down a House in the Whole, or in Part; that is, pulling down Partition Walls, or any fundamental Part of the Building thereof, is Waste: And the taking away, or breaking down Wainscot, Doors, Windows, Benches, Coppers, &c. whether the same be set up by the Lessor or Lessee, by our old Books, it is Waste; and if the same were fixed to the Freehold by the Lessor, it is so still: But of late it has been doubted whether it be Waste, if they were put up by the Lessee; and it has been held, that such Things may be taken away by the Lessee, before the Expiration of his Term, but then the Freehold must not be weakened or damaged thereby. *1 Inst.* 53. *Bro. Waste* 69. *4 Rep.* 24. *1 Salk.* 368.

If a Lessee cuts down Timber for repairing a House, a little before it is used, there being visible Occasion for Repairs, 'tis not Waste; but if the want of Repairs proceeds from the Tenant's Default, as if he suffer the House to be wasted, and then sell Timber to repair it, this is double Waste: It is otherwise if the House were ruinous at the Time of the Lease, and it afterwards fall; and if the Lessee do, or suffer Waste, and repair before Action is brought, an Action of Waste doth not lie, but he cannot plead that he made no Waste, but must shew the special Matter. *1 Inst.* 53. *F. N. B.* 59.

Where

Years, Leases, Covenants, &c. 231

Where the Lessee hath covenanted to leave the House at the End of the Term in as good Condition as he found it, and during the Term he doth Waste therein, an Action will not lie presently, because the House may be repaired before the Term expires: But in such Case of leaving Wood or Timber, if it be cut down by the Lessee, the Lessor shall immediately have an Action for it; for now it is not possible for such Lessee to perform his Agreement, or to leave the Wood as he found the same. In an Action of Waste, on any Waste being done in any Houses, or in Woods, so much shall be recovered wherein the Waste is committed; but if the Waste be here and there thro' the Whole, then all will be recover'd: And the Plaintiff shall have the Place or Places wasted, on a Writ of Inquiry thereof, and treble Damages. 4 Rep. 62. 5 Rep. 11. 2 Inst. 303. Stat. 6 Ed. 1. c. 5. 13 and 20 Ed. 1. 11 H. 6. cap. 5.

To fell or cut down any Timber-Trees, viz. Oak, Ash, or Elm, or other Trees in some Counties reputed Timber; or lop or top them to sell, or for any other Intent but for Repairs of the House, &c. it is Waste: And the Cutting down Trees for Reparations, by the Lessee, if he sells them, is Waste by the Vendition, tho' he buy them again, and employ them in Repairs; also if young Trees are cut for Reparation, when there is other Timber, it will be Waste, for which Action lieth. And if the Tenant cuts down Beech-Trees, where used as Timber in Building; or Willows, Maple-Trees, &c. planted for fencing a Manor, or in Defence of a House; this is Waste in the Tenant; as is also cutting down green Wood, if there be dry, or more Fire-bote than is necessary. If a Tenant suffers young Germins to be destroy'd by Cattle, or stubs them up, or any Quickset-Hedge, these are

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Waste;

232 Of Estates for Life, and

Waste; tho' he may take convenient Plough-bote, &c. and cut Underwood. 1 *Inst.* 53. *F. N. B.* 59, 180. *Dyer* 37. 3 *Nels. Abr.* 540.

In Case Trees will never be fit for Timber, or Timber-Trees are hollow, dry^d and dead, so as to bear no Leaves, they may be cut by Tenants for Fire-bote. But Cutting down any Fruit-Trees, whether Apples, Pears, or other Trees that bear Fruit, however decay'd or impaired, if they grow in a Garden or Orchard, is Waste, altho' they are used to repair the House: Yet if they grow in a Field, or any other Place, not appropriated for such Trees; or if they be absolutely decay'd, that they never can bear any Fruit, then Cutting them is no Waste. *Dyer* 335. 1 *Inst.* 53.

A Brewhouse held by a Lessee, being converted into Tenements, notwithstanding they are of greater Value; or if a Corn-Mill be turn'd into a Fulling-Mill, &c. 'tis Waste, because the Things are altered in their Nature. So the Ploughing of Lands that Time out of Mind have not been ploughed up; or Ploughing up Wood-Lands; and it is said, that if a Tenant converts Arable Land into Wood, Wood into Arable Land, or Meadow into Arable, Arable Land into Meadow, or Pasture in Arable; they will be Waste: For they not only change the Course of Husbandry, but also the Proof of the Landlord's Evidence of his Estate: But letting Arable Lands lie unplough'd, is not Waste. 1 *Lev.* 309. *Cro. Jac.* 182. 1 *Inst.* 53. *Dyer* 37.

Ancient Meadow Ground, or Brook Meadow, ought not to be ploughed, if it be it is Waste: Tho' where Meadow Ground hath been at any Time Arable, or sometimes Meadow and sometimes Pasture, if the Tenant plough it up, it is not Waste. A Lessee for Years converted a Meadow into a Hop Ground, and adjudged no Waste, because it may be

Years, Leases, Covenants, &c. 233

be easily made Meadow again; but converting it into an Orchard is Waste, tho' it may thereby be rendered more profitable. 'Tis Waste to suffer a Wall or Bank of the Sea to be in Decay, so that the Meadow Ground is surrounded with Salt Water, and receives Damage; not if the Land be overflow'd suddenly by the Sea, or violent Tempests; and the not scouring of a Mote or Ditch, by reason whereof the Groundsils of the House are rotten, is Waste. 2 *Roll. Abr.* 814. 2 *Leon.* 174. *Owen* 43.

A Tenant digging any Mines of Metal, Stone, Coals, Gravel, &c. and generally any Thing hidden in the Bowels of the Earth, it is Waste, if he have no Power by express Covenant to do it; but if the digging be of Stones, Clay, Earth, &c. for Repairs of the House, and used accordingly, it will be no Waste. Where Lands are let with the Mines, the Lessee may dig and take the Profits of open Mines, but he cannot dig for new; for if at the Time of making the Lease any Mine be open, the Words shall be restrained naturally to the Mine that is open already, and the Opening another is Waste: But if the Land be so let with the Mines, and no Mines are open at the Time of the Lease, there the Lessee may dig new Mines, else those Words would be absolutely void. 1 *Inst.* 53, 54. 5 *Rep.* 11.

If where there is a Dove-house, Warren, Park, Fishery, &c. on the Lands leased, the Lessee take and destroy so many of the Pigeons, Rabbits, Deer, or Fish, that such sufficient Stores be not left as he found when he entered on the Land; or if he suffers the Pales of the Park to decay, whereby the Deer are dispersed, or doth any Thing by which the Lessor is deprived of the annual Produce, it will be Waste. 1 *Inst.* 53.

Nuisances.

Nusances.

There are *Nusances* done to and by Tenants, of which I have before taken some Notice, under the Head of Freeholders erecting Pigeon-houses or Dove-cotes: And a Nuisance may be to a Man's House, Water, Way, Light or Air, by Building, diverting, stopping, digging, &c. whereby he is damnified, and receives any particular Injury. If one builds his House so, that the Eaves thereof hang over and drop upon mine, and cause it to perish, or otherwise trouble my Dwelling therein; or if it be so near my House, that my Windows and Lights are stopped; either of these are Nuisances for which an Action lieth; but not if the Building be on an old Foundation: And tho' the stopping Lights of a House, be a Nuisance; the Stopping a Prospect is not, being only Matter of Delight, not of Necessity. The new Erecting of a Glass-house, or Brew-house, or of an House of Office, &c. may be a Nuisance by their Smoak and offensive Smell, and thereby doing Damage to others. 1 *Inst.* 56. 1. 2 *Roll. Abr.* 137. 1 *Bulst.* 116.

If a Lessee or other Person, hath a Water running to his House or Land for his necessary Use, and another stops or turns it, so that he cannot have the Use thereof, or by Means of which his Land is drown'd; or a next Neighbour stop, or do not scour a Ditch, &c. and Throwing Stones or Rubbish into Rivers; or the Stopping up a Way, leading from Houses to Lands; and in Case a Tanner erects a Lime-pit so near another's Water-course, that the Corruption of the Pit spoils the Water; or if any Dye-houses or Tan houses are erected, the Filth whereof destroys fish in a River;
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if one throw a Beast dying of the Murrain, or the Intrail or Offal of it into my Ground, whereby my Beasts are infected and die; or if any Tallow-chandler sets up a Furnace near an Inn, and the Stink annoys the Guests; or a Butcher's Shop be set up, or Hogs kept in a Hog-stye near a Man's Parlour, whereby he loses the Benefit of it, &c. These Cases are declared Nuisances by Law; and for any of them, and in general for hindering of the wholesome Air, as well as corrupting of it, an Action on the Case lies. 2 Roll. Abr. 140. Cro. Car. 570. 9 Rep. 58. Dyer 248. Style 50. Telu. 48, 159.

And Action of the Case, is different from an *Affise* for a Nuisance; for it is not to abate it, but to recover Damages for the same: If the Nuisance be removed, the Plaintiff is intitled to his Damages which accrued before; and tho' it is laid with a *Continuando* for a longer Time than can be prov'd, Damages will be given for what Time Proof is made of before the Nuisance was abated. 'Tis said both of common Nuisances to Highways, and Rivers, Bridges, &c. which are punishable by Indictment; and of private Nuisances, for which an Action may be brought, that they may be abated or removed by those Persons that are prejudiced by them; and they need not stay to prosecute for their Removal. It hath been adjudged, that every Man may remove a Nuisance; but none can justify doing more Damage in such Case than is necessary, or removing the Materials; and that the Cutting of a Gate set cross an Highway is lawful. Cro. Car. 184, 185. 2 Mod. 253. 2 Lill. Abr. 244. Wood's Inst. 443.

A Man erects a Nuisance, and then lets it; the Continuance by the Lessee has been held a Nuisance, against whom Action lies: In another Case
of

236 **Of Estates for Life, and**

of this Nature, it was ruled, that tho' the Plaintiff might have Assise of Nufance against the Builder the Lessor, he cannot have an Action against the Lessee, because it would be Waste in him to pull it down; but the Plaintiff may abate the Nufance standing on his own Ground: Yet if the Thing done be a Nufance by Intervals, as a Pipe or Gutter, Action may be brought against the Lessee, because every fresh Running, is a fresh Nufance; and if a Man have a Way over the Ground of another, and such other stops that Way, and then demises the Land, Action lieth against the Lessee for continuing this Nufance. But if a Person assigns his Lease with a Nufance; as the Lease is transferred with the original Wrong, and his Assignment affirms the Continuance, for which he hath also a Rent, he shall in any Action answer the Damage occasion'd by it. *Cro. Jac.* 373. *Moor* 353. 1 *Mod.* 54. 3 *Salk.* 248. 2 *Salk.* 460. See *Stat.* 13 *Ed.* 1. *cap.* 24.

If a Person has a vacant Piece of Ground, and builds thereupon, and that House has very good Lights, and he lets this House to another; and after he builds upon a contiguous Piece of Ground, or leases the same to another, if he build thereon to the Nufance of the Lights of the first House; the Lessee of such first House shall have his Action upon the Case against such first Builder, &c. For the first House was granted to him, with all the Easements and Delights then belonging to it. In case a Man sets up a House upon a new Foundation, so near to my ancient House, that thereby he stops up my Lights, I may have an Action against him: So if a Man shall build or set up a Wall, or Woodpile, &c. against the Window or Light of my House, Action lies against him, tho' it be done upon his own Ground. 5 *Rep.* 108, 110. *Mod. Caf.* 116.

Where

Years, Leases, Covenants, &c. 237

Where a Stranger has Land adjoining to a new built House, he may erect a House, and altho' the Windows are thereby darkened, there is no Remedy: 'Tis otherwise of an ancient House, that has ancient Lights, because of the Prescription; but tho' the Way of Declaring was formerly of ancient Lights and ancient Messuage, that is now altered. If two Men are Owners of two Parcels of Land adjoining, and one of them doth build an House upon his Land, and make Lights looking into the other Lands, and this House and the Lights have continued by the Space of thirty or forty Years; yet the other may upon his own Land and Soil lawfully erect a House or other Thing against the said Lights, and the other can have no Action; for it was his Folly to build his House so near to the other's Land. *9 Rep. 55. 5 Rep. 10. Sid. 167. 1 Cro. 118. 1 Lev. 122. 1 Leon. 168.*

If a Man has two Houses, and the House of Office of the One is contiguous to the Cellar of the other, but defended by a Wall, and he sells this House with the House of Office, the Vendee must repair the Wall: So if he keeps this, and sells the other, he himself is to repair the Wall of the House of Office; for he whose Dirt it is must keep it, that it may not be a Nuisance to and damnify his Neighbour. In Case I have a Building beneath, and another Man has a Building above me, and I suffer mine to decay so as to hazard his; or if he suffers his to decay, so that it hazards mine, each of us may have an Action on the Case against the other: Also if a Man hath a Shop or Warehouse over me, and he lay such an extraordinary Weight of Goods more than usually have been, that they break down upon me, I may have Case against him for it. *1 Salk. 360. Kelw. 48. Poph. 46.*

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238 Of Estates for Life, and

An Action of the Case lies against one for not repairing of a House ready to fall upon my House. And if there be a Charge upon any Man, by Reason of the Tenure of his House or Land, to repair any private Way, Bridge, or the like, and he doth it not, whereby I have any special Damage, Action lieth against him. If one be Time out of Mind to repair a Hedge between my Close and his, and he or his Tenant let it be unrepaired, that my Cattle go into his or other Men's Ground, or the Cattle of other Persons come into my Ground, and in either Case I have Damage; I may bring Action thereupon. And where any Hedge and Ditch join together, in whose Ground or Side the Hedge is, to the Owner of that Land generally belongs the Keeping of the same Hedge, and the Ditch adjoining to it on the other Side, in repair and scoured. 22 H. 7. 98. *Book Entr.* 10. 2 *Cro.* 699.

Cottages with Inmates, that is where Persons of one Family, come and dwell in one Cottage together with another Family, by which the Poor of the Parish are increased; these are Nuisances at Common Law: And by Statute, such an Offence is liable to a Forfeiture of 10 s. a Month, inquireable of in the Court-Leet, &c. But if one have a House or Cottage wherein he dwells, and lets Part of it, so that there are several Doors into the Street; it is then as two Houses, and the Under-tenant shall not be accounted an Inmate; tho' it is otherwise if there be but one outer Door for both Families. If a Person take another to Table with him; or lets certain Rooms to one to dwell in, if he be of Ability and not poor, he is no Inmate. 2 *Inst.* 406. 378. *Kitch.* 45. 31 *Eliz.* cap. 7.

Years, Leases, Covenants, &c. 239

In such Cottages as are built for the Poor, more Families than one may be placed: And Cottages are oftentimes erected on the Waste, at the Charge of Parishes, for poor Persons, by the Church-wardens and Overseers of the Poor, having obtained leave of the Lord of the Manor, in Writing under Hand and Seal; but then it must be confirmed by the Justices of Peace in Sessions. The Tenants or Cottagers of new built Cottages, within the Memory of Man, ought not to have Common in the Lord's Waste, though they have four Acres of Freehold Land laid to them, required by the Statute 31 *Eliz.* But a Cottage is properly a little House for Habitation, without Lands belonging to it. And Cottages cannot be pull'd down by Statute; but the Execution of the Penalty, which is 10 *l.* and 40 *s.* a Month for Continuance, is sufficient to suppress them. 4 *E. 1.* 2 *Inst.* 737, 740.

Common.

As to *Common*, belonging to Tenants, it signifies that Soil whereof the Use is common to this or that Town or Lordship: Or it is a Profit that a Man hath in the Land of another Person, usually in common with others; or that Right which one hath to put his Cattle to pasture into Ground that is not his own; and in all Commons, the Property of what is commonable, is in one Person a Right to use it in him and one more at the least.

It seems plainly to appear, that Common in general first began by the Permission of Lords of Manors to their Tenants; and that by long Continuance, Custom has turned what was originally held by Sufferance, into a fixed Right: So that the Law doth much Respect the Custom of the Place therein. There is a Common of Pasture by Grant,
called

240 Of Estates for Life, and

called Common in Gross, where Common is claimed by special Grant or Deed in Writing, and not by Reason of any Lands; whether the same be for any, or all Kinds of Beasts, or for any Number: But Grants of Common are to have a reasonable Construction; as if they be in all a Man's Manor, it is to be understood for commonable Cattle, not for Pigs; nor shall it extend to Gardens. And where a Grant is of a Messuage for three Years, with Common for ten Beasts every Year, it will not enable the Grantee, though he forbear using his Common for two Years, to put thirty Beasts in the last Year; because thereby the Land might be surcharged: And as by this Grant, the Grantee gains a Right, so it restrains the Grantor from doing any Thing to the Prejudice of the Common, by which it might be made less beneficial; as by erecting any Thing on the Waste. 4 Rep. 38. 27 H. 6. 35. Finch 85. 1 Brownl. 220.

The Commons by Prescription, are Common appendant, Common appurtenant, and Common of Vicinage: Common appendant, is a Right belonging to a Man's arable Land, of putting Beasts and Cattle commonable, as Oxen, Horses, Kine and Sheep, in the Ground of another; only by Reason the Land was anciently Arable, unto which the Common was originally annexed or necessarily incident, for the Maintaining of the Cattle that manured the Lands: And this is the best Common, being of common Right. Though a House be built on the Land, to which it is appendant, or it be turned into Pasture; yet may the Common be claimed for such Beasts as were kept on the Lands that were originally arable; and may belong to a Manor, Farm, or Plough-land: It is always either for Beasts as cultivate the Land, or else for such as Dung the same; therefore Common that is claimed

Pears, Leases, Covenants, &c. 241

for other Cattle cannot be Common appendant.
8 Rep. 70. 4 Rep. 87. Perkins 67. 4 Rep. 17, 37.

Common appurtenant is belonging to an Estate for all Manner of Cattle, commonable or not commonable: And it differs from Common appendant in several Things. 1. Common appendant cannot

be created at this Day; Common appurtenant may, and may be claimed by Grant or Prescription.

2. That is for a particular Sort of Cattle; this for any Kind. 3. That can be only for a certain Number of Beasts, such as Manure the Land: This

may be claimed, and taken for Beasts without Number. 4. That is only for Beasts levant and

couchant on the Land; this for any Beasts that are not, yet belong to the Person who claims it.

5. That must be claimed in the Right of some ancient arable Land: This may be in Right of any new arable Land, or any Meadow, or House.

6. And some make this Difference, that Common appurtenant may be sever'd from the Land where-

to it appertains; but not the Common appendant.

4 Rep. 37. F. N. B. 180. Plowd. 161.

The Common of Vicinage, or by Reason of Neighbourhood, is a Liberty that the Tenants of one Lord in a Town, have to Common with the Tenants of another Lord in another Town: It is where the Tenants of two Lords have used Time out of Mind to have Common promiscuously in both Lordships, lying together and open to one another. This is not so properly a Right of Common, as an Excuse of Trespass, having its Beginning by two different Commons lying contiguous and unfenced; whereupon it naturally followed that the Cattle of the several Commoners strayed into the Common of the other, and each being equal Trespassers; and so because of the Frequency of the mutual Damage of the Cattle to their se-

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242 Of Estates for Life, and

veral Commons, the Commoners having all forborn suing one another, at length in Process of Time the Action was gone. 8 Rep. 78.

And this Kind of Common, which is called *Intercommoning*, doth not intitle the Commoners to put their Cattle on the neighbouring Common; for if they do, they will be still Trespassers, and the Cattle distrainable; but they may turn them into their own common Fields, and if they escape to the Neighbour Common, they must be suffered, and it is excusable. Though the Inhabitants of one Town or Lordship may not put in as many Beasts as they will, even on their own Common, but with Regard to the Freehold of the Inhabitants of the other; for otherwise it would be no good Neighbourhood, upon which all this depends: And if one Lord incloses the Common, the other Town cannot then Common; but tho' the Common of Vicinage is gone, Common appendant remains; for every such Common by Reason of Vicinage or Neighbourhood, is a Common appendant. 1 Inst. 122. Dyer 47. 7 Rep. 5. 4 Rep. 38. 1 Danv. Abr. 799.

Common appendant may be upon Condition; and be for all the Year, or for a certain Time; or for a certain Number of Beasts, &c. by Custom and Usage; tho' it ought to be for such Cattle as plough and compost the Land, to which it is appendant: It may be to Common in a Field after the Corn is severed, 'till the Ground is resown; so it may to have Common in a Meadow after the Hay is carried off the same, until *Candlemas*, &c. A Man may prescribe to have Common appurtenant for all Manner of Cattle, at every Season in the Year: But if a Custom or Prescription be alleged, for all Sorts of commonable Cattle as belonging to a Tenement, &c. it must be for Cattle
levant

Pears, Leases, Covenants, &c. 243

levant and couchant upon the Land, (which is so many as the Land will maintain) or it will not be good: And if a Person grants Common without Number, the Grantee cannot put in so many Cattle, but that the Grantor may have sufficient Common in the same Land. 25 *Aff.* 8. *Yelv.* 185. 1 *Danv. Abr.* 797, 798.

A Common of late Times erected, is done by Deed: And if a Man grant by Deed Common to another in Land wherein he hath nothing, if he afterwards purchases the Land, this shall be a good Common appurtenant; for it is not necessary that he should have the Land at the Time of the Grant. If the Common appurtenant be not by Grant, as it is against common Right, it must be prescribed for; and a Prescription to exclude the Lord is against Law: Common appurtenant for any certain Number of Beasts, may be granted over to another; but if a Man prescribes to have Common appurtenant to the Manor of *B.* for all his Beasts *levant and couchant* thereon, it has been adjudged he cannot grant it over. 1 *Lill.* 282. 1 *Danv. Abr.* 800. 1 *Roll.* 398. *Cro. Jac.* 15.

Lords of Manors may depasture in Commons where their Tenants put in Cattle; and a Man may use Common appurtenant to his Manor, with Cattle which are for his Household; tho' it is said he cannot use it with Cattle that are to sell: The Commoners may not use Common, but with their own proper Cattle; but if they have not any Cattle to manure the Land, they may borrow or hire other Beasts to manure it, and use the Common with them; for by the Loan they are in a Manner made their own Cattle. A Grantee of Common appurtenant, for a certain Number of Cattle, cannot Common with the Cattle of a Stranger: But he that hath Common in Gross, may

244 Of Estates for Life, and

put in a Stranger's Cattle, and use the Common therewith. 1 *Inst.* 122. 1 *Danv. Abr.* 798.

The Lord may agist the Cattle of a Stranger in the Common, by Prescription: And he may Licence such a Stranger to put in his Cattle, if he leaves sufficient Room for the Commoners. But it is held if the Lord of the Soil put in Cattle into a Close, contrary to Custom, when it ought to lie fresh, a Commoner may take the Cattle Damage-feasant: Otherwise it is a general Rule, that he cannot distrain the Cattle of the Lord. If where there is not an Overplus of Common, the Lord surcharges it; the Commoners are not to distrain his Beasts, but must commence an Action against the Lord: But the Lord may distrain, where the Common is surcharged by the Commoners; and bring Action of Trespass, for any Trespass done in the Common: Also a Commoner may distrain Beasts put into the Common by Strangers, or every Commoner may bring Action of the Case, where Damage is received; tho' one Commoner cannot distrain the Beasts of another Commoner. 1 *Danv.* 795, 807. 9 *Rep.* 112, 113. 2 *Mod.* 6. *Lutw.* 1238.

If a Commoner surcharges the Common, the other Commoners may have a Writ of Admeasurement; and the Admeasurement is to be according to the Quality and Quantity of the Freehold, and for all the Cattle which are upon the Land: It lies only for one Commoner against another; and not against a Commoner without Number, or those that have Common appurtenant or in Gross; nor against the Lord, in which Case there must be an Assise of the Common. In Admeasurement of Common of Pasture, on a second Surcharge, after admeasuring, the Plaintiff Commoner shall have his Writ and Damages: And if any Commoner incloses,
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or builds on the Common, every Commoner may have his Action for the Damage; but where Turf is taken away from the Common, the Lord only is to bring the Action, yet it is said the Commoners may have Action for the Trespass, by entering on the Common, &c. 1 *Danv. Abr.* 809. 1 *Roll.* 89, 398. 2 *Leon.* 201. 13 *Ed. 1. cap.* 8.

A Lord may make a Pond on the Common; and if the Lord make a Warren thereon, the Commoners may not kill the Conies, but are to bring their Action for Damage, for they may not be their own Judges. A Commoner shall not make any Thing new, nor cut Bushes, or dig Trenches, &c. in the Common, without a Custom to do it; and a Commoner cannot dig Clay on the Common, which destroys the Grass, and carrying it away doth Damage to the Ground: He can do nothing to impair the Common; but may reform a Thing abused, fill up Holes, dig down Mole-hills, &c. for Improvement. 3 *Inst.* 204. 1 *Roll. Abr.* 90, 405. 1 *Nelf.* 462. *Godb.* 344. 1 *Brownl.* 308.

The Property of the Soil is intirely in the Lord; but the Use of it, jointly in him and the Commoners: No Commoner can take the Grass that grows on the Common, otherwise than by depasturing it; nor may he meddle with the Soil of the Common. But if the Owner of the Soil set up a Hedge on the Common, and so keep out the Commoner, he may throw it down; though if the Hedge be on other Ground, he can only break his Way through it: A Commoner may abate Hedges erected on a Common; for tho' the Lord hath an Interest in the Soil, by abating the Hedges, the Commoner doth not meddle with it. 45 *E.* 3. 25. 15 *H.* 7. 2 *Mod.* 65.

By the Common Law, there could be no Improvement of Common; but by Statute it is provided, that the Lord may approve against his Tenants, *viz.* inclose Part of the Waste, &c. leaving Common sufficient with Egress and Regress for the Commoners; and Neighbours as well as Tenants claiming Common of Pasture, shall be bound by it: A Tenant may also approve, if the Lord hath Common in the Tenant's Ground. If the Lord incloses any Part of the Common, and leaves not sufficient Common in the Residue, the Commoners may not only break down the Inclosures; but may put in their Cattle, tho' the Lord ploughs and sows the Land: But if any, upon just Title of Improvement, do make a Hedge or a Ditch for that Purpose, which afterwards is thrown down in the Night, by Persons unknown, the Towns adjoining shall be distrained to make such Hedges, &c. at their own Charge. *Stat. 20 H. 3. cap. 4. 13 Edw. 1. cap. 46. 2 Inst. 88, 476. 1 Roll. Abr. 406.*

If the Lord of a Manor incloses Part of the Common, and suggests that it is only an Improvement within the Statute of *Merton*, and the Tenants by Force throw open the Inclosures, the *Chancery* will grant an Injunction, and direct an Issue to be tried at Law, whether there was sufficient Common left beyond what was inclosed. There being an Agreement for an Inclosure, all that claimed Common were not Parties to it; and although it was insisted that to decree it, would be to do a manifest Wrong; yet the Court decreed the same, and said that if any who had Interest were not Parties to the Agreement, they could not be bound, and so received no Prejudice; but however, that it should not be in the Power of two
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Years, Leases, Covenants, &c. 247

or three wilful Persons, to oppose a publick Good.
2 Vern. 356. 1 Chan. Cas. 48.

Where an Agreement was between the Lord and some of the Tenants to stint a Common, it was decreed, tho' opposed by one or two humour-some Tenants; and said, that an Agreement to stint, was more favoured than an Agreement to inclose: In a Case where it was not charged, that the Defendant would be benefited by an Inclosure, nor that there was any Agreement for it; for these Reasons, the Bill to compel the only Freeholder in the Manor to consent to the Inclosure was dismiss'd. A Man having Common on a Down for so many Sheep, &c. it was held, that tho' the Common was over-stocked by the Grantor, the Grantee shall not be relieved in Equity; because a Commoner may have an Action at Law in such a Case. *2 Vern. 103, 116. 1 Chan. Rep. 259.*

At a Court of a Manor a By-Law was made by the Jurors there, according to the Custom, whereby it was ordered, That no Commoner should keep any Cattle in the Bounds below a certain Meer, under the Penalty of 3 s. 4 d. for keeping Cattle against the said Ordinance, and for the Penalty forfeited, a Distress was taken upon one of the Commoners, and thereupon a Replevin being had and Judgment therein; a Writ of Error was brought in B. R. where the Judges held, that an Ordinance by Custom, for the Government and better regulating of the Common, is good. And if the major Part of Commoners, &c. make a By-Law or agree, that no Man shall put in his Beasts before such a Day; this shall bind the others who do not assent: But it shall not take away the Inheritance of the Commoners. *Cro. Car. 497, 498. Dalt. 103. 8 E. 3.*

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248 Of Estates for Life, and

By Statute, Commons and Forest Grounds are to be driven yearly at *Michaelmas*, or within fifteen Days after, in Pain of 40 s. and these Drifts are made, that it may be known on Examination whether the Commons are surcharged or not, and whose the Beasts are thereon, and whether commonable, &c. None shall put to feed upon any Common, any Stone-Horses, being above two Years old, and not fifteen Hands high (except in the Fen-Grounds of *Cambridgeshire*, *Lincolnshire*, &c. and there thirteen Hands by a later Statute) on Pain of Forfeiture; and any Man may seise to his own Use any stoned Horse of less Stature, put into any such common Ground, having first by the Assistance of the Constable, &c. brought the Horse to the next Pound, and there had the same measured in the Presence of three other sufficient Men.

But an Horse that makes an Escape into such Common, shall not be questioned, so that he stay not above four Days after Notice thereof given at the Owner's House, or in his Parish-Church: And this Statute shall not restrain keeping of Horses under Statute-Size, upon Commons where Mares are not usually kept. No Person shall put upon Common Grounds, or Common Fields, any scabbed, or infected Horse, on Pain to forfeit 10 s. to the Lord of the Leet: And Stewards of Leets are to take Presentments of these Offences; which shall be heard and determined by Justices of Peace in their General Sessions. *Stat. 32 H. 8. cap. 13.*

Persons having Inheritance or Freehold in a Park, &c. being a Mile about, or their Farmers, are to keep two Mares apt to bear Foals, thirteen Hands high, under the Penalty of 40 s. a Month; and they shall not suffer them to be leaped by stoned Horses under fourteen Hands. The Sellers of
Horses

Years, Leases, Covenants, &c. 249

Horses in Fairs or Markets shall cause them to be rid or stand openly one Hour, and procure Vouchers of the Sale to them; and the Names of the Buyer, Seller and Voucher, with the Price of any Horse sold, must be entered in the Toll-taker's Book, and a Note thereof delivered to the Buyer: And a Horse stolen, if not sold according to the Statute, may be taken again; and if so sold, may be redeemed by the Owner in six Months, repaying the Buyer, &c. Stealing of Horses is Felony; and so is destroying them in the Night-time; but wounding them, incurs a Forfeiture of treble Damages only. All this is by Statutes 27 H. 8. cap. 6. 31 Eliz. cap. 12. 2 & 3 Ed. 6.

Farms.

None shall take by Lease, or otherwise, above two *Farms*, or Houses and Tenements of Husbandry, whereunto any Lands are belonging, in any Town, or Village; and they are to be situate in the same Parish where he dwells, on Pain to forfeit 3 s. 4 d. for every Week he takes the Profits of them: And no Parson or Spiritual Person shall take any Farm or Lands, on Forfeiture of 10 l. for every Month he so continues the same; and Taking any Parsonage or Vicarage in Farm, shall forfeit 40 s. a Week, to be divided between the King and Informer or Prosecutor. Also no Farmer, Grazier, &c. shall keep in his own Possession, at any one Time, above Two thousand Sheep, accounting six Score to the Hundred, on Pain of 3 s. 4 d. a Sheep; but here Lambs shall not be reckoned as Sheep, 'till *Midsummer* Twelve-month after their Fall: And if any happen to have more by Reason of any Executorship, &c. they shall not be impeach'd, if they put them off before the
End

250 **Of Estates for Life, &c.**

End of the Year. *Stat. 25 H. 8. cap. 13. 21 H. 8.*

And whoever shall feed above One hundred and twenty shorn Sheep for the most Part of the Year upon his Grounds, which are several and apt for Milch-Kine, and not commonable, or above twenty Oxen, Heifers, or other Kine, on his several Pastures, and shall not for every sixty Sheep, or ten Cattle, keep one Milch-Cow, and rear up one Calf, &c. he shall forfeit 20 s. for every Month it is neglected to be done: But neither this nor the abovesaid Acts, shall bind such Persons as keep Sheep or feed Beasts for the Maintenance of their Houses, or their own Provision. And Prosecution for Offences to be within one Year, before Justices in their Sessions. *2 & 3 P. & M. cap. 3.*

Cattle bought in any Fair or Market, shall not be sold again in the same Market, on Pain of Forfeiture: And none may buy any Cattle, and sell them again alive, until he hath fed them five Weeks in his own Ground, or where he hath Common, upon Pain to forfeit double the Value. Factors shall not buy Cattle, other than Swine or Calves, within eighty Miles of London, under Penalties; nor shall Butchers buy any fat Cattle to sell again, on Pain of forfeiting the Value: And Drovers of Cattle, who buy them in one Place to sell in another, are to be licensed by Justices of Peace, &c. and if they drive their Cattle on the Lord's Day, shall forfeit 20 s. *Stat. 3 & 4 Ed. 6. 5 & 6 Ed. 6. cap. 14. 5 Eliz. 22 & 23 Car. 2. 1 Jac. 2.*

No Cattle may be imported, dead or alive, but shall be liable to Forfeiture: But Horses, Cows, Swine, &c. may be transported, paying the Custom Duties. Persons exporting Sheep shall forfeit them, and 20 s. for every Sheep; also 3 s. for every

Of Distresses for Rent, &c. 251

every Pound-weight of Wool exported: And Farmers and other Persons in the Counties of *Kent* and *Sussex*, within ten Miles of the Sea, are to give an Account in Writing after Sheep-shearing, of the Number of Fleeces, to the next Officers of the Customs, &c. 18 *Car. 2. cap. 2.* 12 *Car. 2. cap. 32.* 9 & 10 *W. 3. cap. 40.* See late Statutes against Exportation of Wool. 4 *Geo. 1. cap. 11.* 5 *Geo. 2. cap. 21.*

Of Distresses for Rent, reserv'd on Leases, and Replevins, and of Ejectments.

Distress signifies most commonly any Thing which is taken and distrained for Rent behind, or other Duty: And with the Head *Replevin*, and *Ejectment of Tenants*, requires a particular Chapter.

Of common Right, a Person may distrain for Rents, and all Manner of Services; and for Rent reserved upon a Gift in Tail, Lease for Life, or Years, &c. tho' there be no Clause of Distress in the Deed, the Grantor or Lessor may distrain for the same, so as the Reversion be in himself: But on a Feoffment in Fee, a Distress may not be had at Common Law, unless expressly reserved in the Deed. And if a Lessor for Years grant away all his Term to another, rendering Rent, he cannot distrain for this Rent; but Action of Debt will lie for it as a Sum in Gross. 1 *Inst.* 57, 205. 2 *Lev.* 80. See Statute 4 *Geo. 2.*

A Man may take a Distress not only for Rents or Services due ; but also for Fines and Amercements ; and for Damage-seasant, that is where a Stranger's Cattle are found in the Ground of another doing Damage, &c. And the End or Effect of Taking the Distress in the first Place is, that the Party distrained, who is supposed to withhold another's Debt or Duty, may be compelled to pay the same to the Party distraining who claims it ; or shew in a Course of Law, on a Replevin, some lawful Cause why he ought not to satisfy the same : And by the Common Law, Distresses for Rent were not to be sold, but only detained for enforcing the Payment of the Rent ; but this is altered by Statute. *Dr. & Stud. cap. 9.*

The Distress ought to be made of such Things whereof the Sheriff may make Replevin, and deliver again in as good Plight and Condition as they were at the Time of the Taking. In Taking a Distress to make it justifiable, the Party must see he hath good Cause to distrain ; that he have Power to take the Distress, and from the Person of whom he takes it ; that the Thing for the Quality thereof be distrainable, and that he distrain it in due Time and Place, &c. He who takes a Distress for another, must have a good Warrant for doing the same ; and is to do it in his Name ; and a Bailiff or Servant may distrain for his Master. *1 Inst. 47. 1 Cro. 748. 2 Cro. 436.*

If any Person shall distrain the Goods or Cattle of another, on Purpose to injure him, he shall pay treble Damages : And if Distress and Sale be made, where there is no Rent due, the Owner of the Goods distrained, shall recover double Value and Costs. And Distresses for Rent are to be reasonable, and not excessive ; and not be taken in the King's Highway, or the common Street, or in the
ancient

Replevins, and Ejectment. 253

ancient Fees of the Church: Also no Distress of Cattle shall be driven out of the County, or the Hundred where it is taken; except to a Pound overt within the same County, not above three Miles distant from the Place where taken; neither shall a Distress be impounded in several Places, whereby the Owner may be constrained to sue several Replevins for the Delivery thereof, under the Penalty of 5 *l.* and treble Damages; and not above 4 *d.* is to be taken for the Poundage of one Distress, or less where the same is usually taken, under the same Penalty, &c. 2 *Inst.* 107. 13 *E. 1.* 2 *W. & M.* 51 *H. 3.* 52 *H. 3.* 15. 3 *Ed. 1.* 9 *Ed. 2.* 1 & 2 *P. & M. cap.* 12.

A Rent by Prescription may be distrained for; but on a Lease of Tithes, rendring Rent, it is held no Distress shall be of the Tithes, because they are the Thing it self. All Things in general of which a Replevin lies, being valuable, whereof some Body hath Property, not the Distrainer, and which may be known again, and restored to the Owner intire, and are not *Fera Natura*, (such as Dogs, Conies, &c.) may be distrained. Any Goods may be distrained, besides Cattle: So may Money sealed up in a Bag; Hay in a Barn, or Ricks, &c. a Cart or Waggon full of Corn or Grain; or Horse laden with Sheaves, &c. and if a Horse be so laden, the Horse only, or Sheaves alone, may be distrained for Services; Horses, &c. drawing a Cart loaden, may be severed from it, and taken as a Distress for a Rent-Service; and so if there be a Servant or other Person in the Cart; tho' it has been held otherwise for Rent, but allow'd for Damage-feasant: And altho' a Horse with a Rider on him cannot be distrained for Rent, yet it seems he may for Damage-feasant; and be led to the Pound with the Rider on his Back. 11 *H. 4.* 40.
1 *Roll.*

254 Of Distresses for Rent,

1 *Roll. Abr.* 667. 59. 22. 2 *Inst.* 82. 1 *Jones* 197. *Sid.* 422, 440. *Cro. Eliz.* 7, 8. 1 *Vent.* 36.

Such Things of which no Replevin lieth, cannot be distrained: As Money out of a Bag, &c. Fish in a Pond, or Poultry; Cattle of the Plough, if there be other Distress sufficient; a Horse in a Smith's Shop, or in an Inn; an Anvil in a Smith's Shop; or any Tools and Instruments of a Man's Trade or Profession; the Books of a Scholar; an Ax in a Person's Hand, cutting Wood; or any Thing one carries about him; a Man's wearing Apparel; a Garment, or Cloth in a Taylor or Weaver's Shop; Sacks of Corn or Meal in a Mill, or Market; Corn growing, or after it is ground; Sheaves or Shocks of Corn, &c. not in a Cart; none of these by our Common Law may be taken as a Distress, nor does a Replevin lie of them: But see after, the Statutes 2 *W. & M. & 11 Geo.* 2. Nor may any Thing fixed to or belonging to the Freehold, as a Furnace, Windows, Boards, &c. 1 *Roll. Rep.* 59. 2 *Inst.* 133. *Dyer* 312. 1 *Inst.* 47. *Sid.* 440. 1 *Roll. Abr.* 666.

The Goods of a Carrier are privileged, and may not be distrained for Rent, tho' the Waggon wherein loaded is put into the Barn of a House, &c. on the Road: But it is said, tho' many Things are privileged from a Distress; as a Horse on which one rides, a Carrier's Horse and Goods, a Horse at a Smith's Shop, Cloaths at a Taylor's Shop, &c. because it is not fit that the Rent of a Stranger should be paid with such Things: Yet this must be understood, where there are Goods sufficient beside to be distrained. And in another Case it was said, that Implements or Utensils of Trade are only privileged at such Times, when other Goods may be taken; for spare Implements of Trade or Goods for which there is no present Oc-
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casion

Replevins, and Ejectment. 255

casion for the Owner to use, those are distrainable.
5 Mod. 361. *Carth.* 358. 11 *H.* 8. 25. *Owen*
 139.

If a Man come into a common Inn, his Goods or Beasts shall not be distrained there; for that would be very prejudicial to the publick Good. Yet where Cattle coming out of the Country to *London*, were put in a Ground belonging to an Inn for a Night, tho' with Leave of the Landlord, and with the Consent of the Lessee, and were there distrained; it not appearing by the Pleading to be a common Inn: The Court held, that Cattle driving to Market, and put into Pasture by the Way, were not privileged from being distrained; for 'tis by the Statute of *Marlbridge*, that Beasts cannot be distrained in the Highway, and not by the Common Law; and that the Lessor's Licence did not conclude him from taking the Distress. But afterwards on a Bill in Chancery brought in this Case; it was adjudged, the Owner should be repaid the Value of his Cattle, and all Charges in Law and Equity; because the Landlord had been guilty of a Fraud by encouraging and giving Leave to the Owner to put in his Cattle, and then distraining them contrary to the Faith of his own Leave so given. 2 *Ventr.* 50. 2 *Lutw.* 1165. 3 *Lev.* 260. 2 *Vern.* 129.

Another's Goods in the Tenant's House, &c. and Beasts or Cattle of a Stranger, in the Landlord's Ground, being *Levant and Couchant*, and having well rested themselves there, may be distrained: If the Fences of another Man's Land be out of Repair, and the Neighbour's Cattle escape thither, and are *Levant and Couchant*, without any fresh Pursuit after them, they may be distrained for Rent; for the Land is Debtor for the Rent, and the Landlord must resort there, and is not to inquire whose

whose Cattle they are which he finds therein: Tho' if the Owner freshly pursues the Cattle, they are not distrainable; by Reason they are supposed to be always in his View and Possession. If the Owner of the Cattle is to maintain the Fences, and they escape to another's Ground, they may be distrained before Levant and Couchant, and notwithstanding fresh Pursuit. 1 *Inst.* 47. 1 *Roll. Rep.* 124. 1 *Nels. Abr.* 667.

Goods brought on a Horse for a Neighbour to weigh, cannot be distrained, because they were brought there for a special Intent. And Cattle delivered by the Sheriff to Tenant in Dower for Seisin of Rent, shall not be distrained for Arrears of Rent of the same Lands: Nor may any Thing be taken as a Distress that is in Custody of the Law, while it so continues; as Things distrained Damage-feasant, Goods taken in Execution, &c. As to this last see now Statute 8 *Ann.* All Distresses for Rent must be made on the Premises, by the Common Law; but this is also in some Measure altered by that Statute: And where a Landlord comes to distrain Cattle, which he sees on the Tenant's Ground, if the Tenant, or any other to prevent the Distress, drives the Cattle off the Ground, the Landlord may in such Case make fresh Pursuit and distrain them; and if then they are taken presently, tho' in another's Land or House, or in the Highway, the Taking will be lawful: But if before the Distress, the Owner of the Cattle renders his Rent, and a Distress is taken afterwards, it is wrongful. *Cro. Eliz.* 596. *Plowd.* 38. 1 *Inst.* 160. 2 *Inst.* 107. 1 *Roll. Abr.* 671.

And where a Distress is wrongfully taken, the Tenant may make *Rescous*; but a Stranger of his own Head cannot Rescue them for him: If a Distress be taken without Cause, as where no Rent

is due to the Landlord, or any Thing is distrained that is not distrainable, where one distrains in the Highway, &c. Rescous may be made by the Tenant, and be justifiable. But when the Distress is upon good Cause, the Owner may not rescue it: And tho' the Distress be without Cause, if impounded, being then in Custody of Law, he cannot break the Pound and take away the Cattle; if he does, the Party distraining may have his Action, and retake the Distress wherever he finds it: Yet if a Man takes Cattle as Damage-feasant without Cause, and puts them in a Pound, and the Owner makes fresh Suit, and finds the Door unlocked, he may justify the Taking out the Cattle. If Cattle distrained, in driving to the Pound, happen to go into the House of the Owner, if he do not deliver them, it is a Rescous in Law. 1 Inst. 47. 160. 4 Rep. 11. 9 Rep. 22. F. N. B. 100, 102. 1 And. 31. 1 Salk. 247.

No Distress ought to be taken on a Sunday, unless it be for Damage-feasant: Nor may one distrain for Rent in the Night. Or Gates, &c. be broke open to make a Distress; the Landlord may not enter into the Tenant's House for that Purpose, unless the Doors are open; but one may break an inner Door of a House, &c. to take the Distress, if the outer Doors be open: And see the new Statute. After the Term ended, no Distress can be; except the Landlord's Title and the Tenant's Possession continue, by Statute; for if a Lease for Years be ended, and the Lessee keeps Possession, he may be distrained. Nor can it be regularly during the Term, if the Rent be not made payable before the Term is ended: For if the Lease be till Michaelmas for one Year, rendering Rent at Michaelmas, he cannot distrain before that Time, at which Instant the Term is determined. 9 Rep.

258 **Of Distresses for Rent,**

66. 1 *Inst.* 142. 14 *H. 4.* 31. 22 *H. 6.* 96. *Doctor and Student* 74.

For one and the same Rent, there cannot be two Distresses; this is understood if there were sufficient Goods when the first Distress was taken; for then it was the Distrainer's Folly he did not take enough to satisfy the Rent; but if there were not then a sufficient Distress, there may be a second Distress. And by the Stat. 17 *Car. 2.* When the Value of Cattle distrained shall be found not to be of the full Value of the Arrears of the Rent, &c. for which the Distress was taken, the Party distraining, his Executors and Administrators may distrain again for such Arrears. It has been likewise admitted, that where a Distress dies, the Distrainer may again distrain; and in that Case the Distress failed by the Act of God: But 'tis otherwise where it escapes, especially unless it be made appear the Distrainer was in no Default. *Cro. Eliz.* 13. *Lutw.* 1536. 1 *Salk.* 248.

A Distress of Cattle must be brought to the common Pound, or be kept in an open Place; and being put into such common Pound, the Owner must take Notice of it at his Peril; but if in any other open Place, Notice is to be given the Owner, that he may feed them; and then if the Cattle die for want of Food, the Tenant shall bear the Loss; and the Landlord may take another Distress for his Rent. Where one impounds Cattle distrained, he cannot justify the Tying them in the Pound; if he ties a Beast, and it is strangled thereby, he must answer it in Damages: And if the Distrainer of the Cattle put the Distress in a broken Pound, and it escape from thence, he can have no Action for it; but if it be from another Pound, without his Default, he may have Action of Trespass. One distrained a Hog Damage-feasant, and put it in a
common

common Pound, from whence it escaped, and then brought Trespass against the Owner for the Damage done; but here it was held, the Action did not lie, for it was the Plaintiff's Fault to put the Hog in a Pound which could not hold him, and it might have been in any other Place, even in a Pound covert. 5 Rep. 90. 1 Inst. 47, 96. 1 Salk. 248.

In Case of a Distress, it is not lawful to use it in any Manner, because the Cattle or Goods by Law are but as a Pledge; only where Necessity requires, for the Owner's Benefit, as to milk a Cow, &c. which otherwise would be spoiled; and so of the like: But if a Horse distrained, be used by riding or drawing, it is tortious; and tho' it is said if one distrains Armour, he may cause it to be scoured to avoid Rust; or if Raw Cloth, he may cause the same to be fulled, &c. this seems not to be Law. And where there is a Custom to distrain Hides or Skins, the Person distraining may not tan them; for the Property is as it were altered thereby, and the Marks by which it may known to be replevied being taken away. 2 Cro. 148. Cro. Eliz. 786. 2 Roll. 562. 1 Ventr. 37.

If a Man distrains dead Goods, as Utensils of a House, or such like, which may take Damage by Wet or Weather, &c. he ought to impound them in a House, or other Pound Covert or Close: For if he impounds them in a Pound overt or open, he shall answer for them. And by our old Law, they were to be removed immediately, or the Lord became a Trespasser; except Corn or Hay, by Stat. 2 W. & M. If a Landlord doth not remove or secure Goods distrained immediately, but quits them till another Day, during which Time they are taken away, it is not a Rescous for want of Possession: And if Notice be not given in Writing, on

taking a Distress, of the Things distrained, and for what you distrain them, they may not be sold by the Statute 2 *W. & M.* but the Distress is to be kept till Replevin or Satisfaction. Where Lands lie in several Counties, a Distress may be made in one County, for the whole Rent; and the Seising upon some Goods as a Distress, in the Name of all the Goods in a House, is a good Seizure of all. 1 *Inst.* 47, 154. *Mod. Caf.* 215.

The Design of a Distress not being to ruin the Tenant by depriving him of the Means of getting his Livelihood by his Trade; 'tis for this Reason, the Tools of a Person's Trade, and the Beasts of the Plough are not generally distrainable: And it has been adjudged, that where a Lord distrained two or three Oxen for 1 *s.* the Party grieved might have an Action upon the Statute of *Marlbridge* for the excessive Distress. But if one distrain four Horses and a Cart for 2 *s.* Rent, this is not excessive, because of the Intirety, they being all fixed to the Cart: And so it is said of a Fold of Sheep, where they are intire, and cannot well be separated; and if one distrain a Horse or an Ox for 1 *d.* if no other Distress was on the Land, it is not excessive; but if Sheep or Swine, &c. were there at the Time of the Taking, it is an excessive Distress, because he might have taken a Beast of less Value. 1 *Cro.* 188. *Dyer* 117, 312. 2 *Inst.* 207. 2 *Ventr.* 183.

If the Lord or another distrains several Times for his Service or Rent, when none is in Arrear, the Tenant may by the Common Law have an *Affise de Sovent Distress*: But if he distrain for Homage or Fealty, so often that the Tenant cannot manure his Land, yet the Tenant may not have that Action. In this Action, the Writ is general, and the Count or Declaration special, and the Judgment

Replevins, and Ejectment. 261

ment therein, not that the Defendant shall recover Seisin, for that he had before; but that he shall hold the Lands *absque Multiplici Distractione*. No Distress could be said to be excessive, that was taken for Homage and Fealty, because of the high Esteem thereof in Law: And for an Amercement in a Court Leet, the Distress may be taken any where within the Hundred, as well out of the Land, as on it, wherever Cattle are of him that is amerced; for the Amercement charges only the Person; and for this a Distress may be taken in the high Street. *F. N. B.* 178. *4 Rep.* 8. *8 Rep.* 50. *2 Inst.* 107. *2 Danv. Abr.* 644.

In Case of Damage-feasant, a Person hath his Election to take a Distress, or bring Action of Trespass; but both he cannot have; and after he has chose one, if he fail of Satisfaction thereby, thro' any Neglect or Default of his own, he cannot have another Remedy for the same Tort or Wrong, and subject the Wrong-doer to a double Punishment for the same Cause. The Statutes as have enabled the Distrainer to sell Goods distrained, do not extend to Distresses taken for Damage-feasant; or for Breach of By-Laws: For Persons can only distrain for Breach of a By-Law, except there be also a Custom to sell. *Salk.* 248. *3 Lev.* 281.

By the aforesaid Statute *2 W. & M. Sess.* 1. c. 5. it is enacted, That when any Goods or Chattels shall be distrained for Rent reserved and due upon any Demise, Lease, or Contract whatsoever, and the Tenant or Owner of the Goods so distrained, shall not within five Days next after such Distress taken, and Notice thereof, with the Cause of the Taking, left at the chief Mansion-house, or other most notorious Place upon the Premises, charged with the Rent distrain'd for, Replevy the same with sufficient Security to be given to the Sheriff

according to Law; then the Person distraining, with the Sheriff, or Under-Sheriff of the County, or the Constable of the Hundred, Parish or Place, where the Distress shall be taken, (and who are commanded to be aiding and assisting therein) shall and may cause the Goods and Chattels distrained to be appraised by two sworn Appraisers, whom such Sheriff Under-Sheriff or Constable, shall swear to appraise the same according to the best of their Understanding; and after such Appraisement made, may lawfully sell the Goods and Chattels, for the best Price that can be gotten, towards Satisfaction of the Rent, and the Charges of the Distress, Appraisement, and Sale; leaving the Overplus, if any shall be, in the Hands of the Sheriff, Under-Sheriff, or Constable for the Owner's Use.

And it shall be lawful for any Persons having Rent due upon any such Demise, Lease, or Contract, to seize and secure any Sheaves, or Cocks of Corn, or Corn loose, or in the Straw; or Hay lying and being in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise on any Part of the Land charged with such Distress; and to lock up and detain the same in the Place where found, for and in the Name of a Distress, until the same shall be replevied upon such Security as aforesaid: And in Default of replevying thereof, within the Time aforesaid, may sell the same after Appraisement made, &c. But so as such Corn, Grain or Hay so distrained, be not removed by the Persons distraining, to the Damage of the Owner, out of the Place where it shall be found and seized; but be kept there as impounded, until the same is replevy'd, or sold.

And upon any Pound-breach or Rescous of Goods or Chattels distrained for Rent, the Person grieved shall have a special Action on the Case for
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Replevins, and Ejectment. 263

the Wrong thereby sustained, and recover treble Damages and Costs of Suit against the Offender or Offenders in any such Rescous and Pound-breach, any or either of them, or against the Owner or Owners of the Goods distrain'd, in Case the same be afterwards found to come to his Use or Possession.

By Statute 8 *Ann. cap. 17.* If any Lessee for Life, Years, at Will, or otherwise, of any Messuage, Lands or Tenements, upon the Demise whereof any Rents are reserved or made payable, shall fraudulently or clandestinely convey and carry off from the Premises his Goods or Chattels; the Lessor or Landlord, or any Person by him for that Purpose lawfully impowered, may within the Space of five Days afterwards, take and seise such Goods and Chattels, wherever they shall be found, as a Distress for the Rent in Arrear, and sell the same, as if they had been actually distrained upon the Premises: But this shall not extend to empower the Landlord to seise or take any Goods as a Distress for Rent, which shall be sold for valuable Consideration before such Seizure made.

And any Persons, having Rent in Arrear, or due upon any Lease for Life, or for Years, or at Will, which Leases are expired or ended, may distrain for such Arrears, after the Determination of the said Leases, in the same Manner as they might have done, if they had not been ended: Provided that such Distress be made within six Kalendar Months after the End of the Lease, and during the Continuance of the Landlord's Title or Interest, and the Possession of the Tenant from whom the Rent is due. And these Distresses to be made as aforesaid, shall be liable to such Sales, and in such Manner, and the Monies arising thereby be distributed

264 Of Distresses for Rent,

buted as by the Act 2 *W. & M.* is directed and appointed.

No Goods or Chattels being in or upon any Messuage, Lands or Tenements, leased for Life, Years, or at Will, shall be taken in Execution, or extended, unless the Party at whose Suit the Execution is sued out, shall before the Removal of such Goods from off the Premises, by Virtue thereof, pay to the Landlord all Sums of Money due for Rent; so as the Arrears do not amount to more than one Year's Rent: And if more Rent is in Arrear, then paying the Landlord or his Bailiff a Year's Rent, the Party may proceed in his Execution, as he might have done before the making of this Act; and the Sheriff or other Officer, shall levy as well the Money so paid for Rent, as the Execution Money.

By the late Act 11 *Geo. 2. c. 19.* for more effectual securing the Payment of Rents, and preventing Frauds by Tenants, it is enacted, That if any Tenant for Life or Lives, Term of Years, at Will, Sufferance, &c. of Messuages, Lands or Tenements, upon the holding whereof any Rent is, or shall be reserved due, shall fraudulently carry away his Goods from such Premises, to prevent Distress for Arrears of Rent, the Landlord, or any Person empowered by him, may within thirty Days after conveying away the same, distrain them wherever they shall be found, and dispose thereof, as if they had been distrained on the Premises; but no such Goods shall be distrain'd, if sold *bona fide*, and for a valuable Consideration before Seizure, to any Person not privy to such Fraud. Any Tenant committing the said Fraud, or other Person assisting therein, shall forfeit to the Landlord double the Value of the Goods carried off; to be recovered by Action of Debt, &c. and where such Goods shall

Replevins, and Ejectment. 265

shall not exceed 50 *l.* Value, the Landlord, or his Agent, may exhibit a Complaint in Writing before two neighbouring Justices of the County, not interested in the Lands, &c. whence such Goods were removed; who are to summon the Parties, and examine the Fact and Witnesses upon Oath, and to inquire into the Value of the Goods: And upon Proof of the Offence, they may by Order under their Hands and Seals, adjudge the Offender to pay the double Value; and on his Neglect so to do, shall by Warrant levy the same by Distress and Sale of Goods; or for want thereof, commit the Offender to the House of Correction for six Months, unless the Money ordered to be paid be sooner satisfied.

Any Person who shall think himself grieved by the Order of the two Justices, may appeal to the Justices of Peace at their next General or Quarter-Sessions to be held for the same County, or Division of such County, who shall hear and determine the Appeal, and give such Costs to either Party as they think reasonable, whose Determination therein shall be final: And where the Party appealing shall enter into a Recognizance, with one or two sufficient Sureties, in double the Sum so ordered to be paid, with Condition to appear at such General or Quarter-Sessions; the Order of the two Justices shall not be executed against him in the mean Time.

And the Landlords, or their Agents, may with the Assistance of a Constable, or other Peace Officer, seize any Goods fraudulently carried away, locked up or secured in any House, Barn, Stable, or Out-house, &c. in order to prevent their being distrained for Rent; and in Case of a Dwelling-house, on Oath first made to some Justice of the Peace of reasonable Ground to suspect that such
Goods

266 **Of Distresses for Rent,**

Goods are therein, may break open the same, and distrain them: They may likewise distrain for Rent, any Cattle or Stock of their Tenants, feeding on any Common appendant or appurtenant, or any Ways belonging to the Premises demised; and may take and seize all Sorts of Corn and Grass, Hops, Roots, Fruits, Pulse, or other Product growing on the Land, as a Distress, which they may cut, gather, cure, carry and lay up, when ripe, in the Barns or other proper Place on the Premises; or if there be none such, then in any other Barn, &c. hired or procured by the Landlord, as near the same as may be; and in convenient Time may appraise, sell and dispose thereof, towards Satisfaction of the Rent and Charges of the Distress, &c. in the same Manner as other Goods and Chattels may be seised, distrained and disposed of: The Appraisement to be made, when the Goods are cut and cured, and not before.

The Tenant is to have Notice of the Place where the Goods so distrained shall be lodged or deposited, within the Space of one Week after the Lodging thereof in such Place, which Notice shall be given to such Tenant, or left at the last Place of his Abode; and if after any Distress for Rent so taken, of Corn, Grass, Hops, &c. as aforesaid, and before the same shall be ripe and gathered, the Tenant or his Executors, &c. shall pay the Landlord, or his Steward or other Person usually employ'd to receive his Rents, the whole Rent in arrear, and all Costs and Charges of making the Distress or occasioned thereby; then upon such Payment, or lawful Tender thereof, so that the End of such Distress is fully answered, the same Distress shall cease, and the Corn, &c. shall be delivered up to the Tenant.

And great Inconveniencies having frequently arisen, in the removing Goods and Chattels distrained

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Replevins, and Ejectment. 267

ed off the Premises, by doing Damage thereto, in Cases where by Law they may not be impounded thereupon; therefore it is ordained, that any Persons may secure Distresses lawfully taken for Arrears of Rent, on such Part of the Premises, chargeable with the Rent, as shall be most fit for the Impounding and Securing any such Distress; and appraise, sell and dispose of the same upon the Premises, in like Manner and under the Directions and Restraints, as if done off the Premises, by the 2 Will. & Mar. or 4 Geo. 2. And any Person or Persons may go to and from such Part of the said Premises, where the Distress shall be secured, to view, appraise, buy and remove the same, on account of the Purchase thereof; and if any Rescous be made of the Distress, the Persons aggrieved thereby, shall have the Remedy given by the said Statute.

It also often happening, that Landlords, or those employed by them, in taking Distresses fell into some Mistake, in the Management or Disposal of them; and the Law construed him upon the Whole, a Trespasser *ab initio*, or from the Beginning: To Remedy this Hardship, it is further enacted, That where any Distress is made for Rent justly due, and any Irregularity or unlawful Act shall be afterwards done by the Party distraining, or his Agents, the Distress it self shall not therefore be deemed unlawful, nor the Party a Trespasser *ab initio*; but the other Party grieved by such Irregularity, &c. shall recover Satisfaction for the special Damage he shall have sustained, and no more, in an Action of Trespass or on the Case; provided that when the Plaintiff recovers in such Action, he shall have his full Costs of Suit; but no Tenant shall recover in any Action, for any such unlawful Act or Irregularity, if Tender of
Amends

268 Of Distresses for Rent,

Amends hath been made him before the Action brought.

And in all Actions of Trespass, or upon the Case, relating to any Entry by Virtue of this Act or otherwise, upon the Premises chargeable with the Rents, or to any Distress or Seizure, Sale or Disposal of any Goods thereupon, the Defendants may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiffs become nonsuit, or discontinue, or Judgment be against them, the Defendants shall recover double Costs.

See the Remainder of this Act, and the 4 Geo. 2. before under *Rent*, and the Titles *Replevin* and *Ejectment*. See also *Tender of Rent*.

The Form of a Landlord's Warrant to distress, on the Statute 2 W. & M.

K Now all Men by these Presents, That I *A. B.* of, &c. Esquire, do hereby authorize and appoint *C. D.* of, &c. to take any Person or Persons to his Assistance, and enter into the House of *E. F.* in, &c. Street, *London*, and there to make a Distress of all such Goods and Chattels, as are in and upon the Premises, for twenty Pounds for Half a Year's Rent, due to me the said *A. B.* at *Michaelmas* last; and after the said Goods are so distrained, if the said *E. F.* doth not within the Time limited in the Act of Parliament for that Purpose made, replevy the same, or pay the said Rent; then and in such Case, I do authorize you the said *C. D.* to cause the said Goods so distrained to be appraised, and according to such Appraisement, to make Sale thereof to such Person and Persons as will buy the same; and to dispose of the Money arising by the Sale, in such Manner

as

Replevins, and Ejectment. 269

as by the said Act is directed : And for your so doing, this shall be your sufficient Warrant. *Witness* my Hand and Seal this tenth Day of *November* 1740.

Signed, sealed and delivered
in the Presence of, &c.

A. B.

The Title and Manner of Making the Inventory, and Appraisement of Goods distrained.

AN Inventory of the several Goods and Chattels, that were seised and distrained by us whose Names are under written, in the House of *E. F.* in, &c. Street, *London*, by an Authority from *A. B.* Esq; to us for that Purpose given, for twenty Pounds for half a Year's Rent due at *Michaelmas* last to him the said *A. B.* which Goods were seised and distrained the Day, &c. of this instant *Novemb.* for the Use of the said *A. B.* for the Rent so due to him as aforesaid.

In the Cellar.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Five Buts of Strong Beer, Value	15	0	0

In the fore Parlour.

A large round Mahogany Table	1	5	0
A Pier Looking-Glass, and Card-Table	3	10	0
Six Beech matted Chairs	1	4	0

In

In the Room backward.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
A Pair of Iron Grates	0	10	0
A Table, &c.			

Witness our Hands this Day, &c. of November 1739.

Valued in all at 26 9 0

By us whose Names are under written,

G. H. }
J. K. } Sworn Appraisers.

L. M. Constable.

The Title of an Inventory, when made by the Landlord himself, of Goods on a Farm.

AN Inventory of Goods, Chattels and Cattle, taken and distrained by *A. B.* Gentleman, on the Day, &c. of *May* 1740. in and upon the Messuage and Lands of *Stoke-Farm* in the Parish of *B.* in the County of *S.* for seventy-five Pounds due to the said *A. B.* for Rent, for Half a Year ending at *Lady-day* last for *Stoke-Farm* aforesaid.

Form

Form of Notice to the Tenant of the Distress taken, when done by Warrant from the Landlord.

Mr. E. F.

BY the Authority of your Landlord *A. B. Esq;* I have this fifteenth Day of *November 1740.* seised upon Part of your Goods in your House in, *&c. Street, London,* for twenty Pounds for half a Year's Rent due to the said *A. B.* at *Michaelmas* last, and have taken an Inventory thereof, and locked them up in your ground Room backwards; and if you do not pay the Rent due, or replevy the Goods mentioned in the Inventory, I shall in five Days Time, according to the Act of Parliament, make Sale thereof; of which take Notice from

Your Friend,

C. D.

Witness that a Copy hereof was this Day delivered to *Mrs. M. F.* the Wife of *E. F.* by

M. N.

A Notice of the Distress, being taken by the Landlord.

M*R. D. E.* You are to take Notice, that I have this Day seised and taken the Goods, Chattels and Cattle herein after-mentioned, or mentioned in the Inventory or Schedule hereunto annexed, that is to say, six Oxen, three Horses, *&c.* in and upon the Lands of *Stoke-Farm* in the Parish

Parish of *B.* in this County of *S.* and have impounded the same in the publick Pound of the said Parish, as and for a Distress for seventy-five Pounds due from you to me for Rent of *Stoke-Farm* aforesaid, for half a Year ending at *Lady-day* last; and that if you do not replevy the same or pay the said Rent, I shall in due Time dispose of the same, according to Law. *Given* under my Hand this Day of, &c. 1740.

In the Presence of, &c.

A. B.

To Mr. *D. E.* at *S.* in the Parish
of *B.* in the County of *S.*

The Oath of Appraisers, on appraising the Goods.

YOU shall swear, that you will faithfully appraise and value the Goods or Cattle now taken in Distress, and mentioned in the Inventory to you shewn, as between Buyer and Seller, according to the best of your Skill and Understanding: You shall not through Partiality, Interest, or otherwise, over or under Estimate the said Goods, but impartially do your Duty herein.

So help you God.

Or the Appraiser's Oath may be shorter,
thus:

I *G. H.* do swear, that I will justly appraise the Goods, Chattels and Cattle mentioned in the Inventory, which shall be produced and shewn to me, according to the best of my Understanding.

Replevins, and Ejectment. 273

The Appraisers valuing the Goods too high, shall be obliged to take them at the Price appraised. *Stat. 13 Ed. 1.*

A *Replevin* is a Remedy grounded upon a Distress, being a Re-deliverance of the Thing distrained to remain with the first Possessor, on Security or Pledges given by him to try the Right with the Distrainer, and to answer him in a Course of Law: And if he pursue not his Action, or it be adjudged against him, then he that distrained shall have again the Distress, by Writ *Retorno Habendo*. 1 *Inst.* 145, 161.

Replevins are by Writ, at Common Law; or upon Plaint in the Sheriff's Court by Statute, for the Party's more speedy having of his Cattle and Goods distrained again; and the Sheriff ought to take two Sorts of Pledges, one by the Common Law, *viz.* Pledges for Prosecution; and another by the Statute, *i. e.* Pledges to make Return of the Cattle, &c. And Replevin lies by Writ in the *King's Bench* or *Common Pleas*; also it lieth in the County-Court, and Court-Baron by Plaint; and a Hundred-Court, may hold Plea of Replevin. The Replevins by Plaint, may be removed out of the County-Court into *B. R.* or *C. B.* by Writ of *Recordare*, and by the Plaintiff or Defendant, but the Defendant must shew the Cause of such Removal in the End of the Writ. 1 *Inst.* 145. *Dyer* 246. 2 *Inst.* 339.

By Virtue of the Statute of *Marlbridge*, 52 *H. 3. cap. 21.* The Sheriff may on a Plaint made to him, without Writ, either by Parol, or Word of Mouth, or by Precept, command his Bailiff to deliver, that is make a Replevin of the Beasts, &c. and may take a Plaint out of the County-Court, and make Replevin presently thereupon, which he ought to enter at the next County-Court; for it would be

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inconvenient, and against the Intent of the Act, if the Party were to tarry for his Beasts till the Court be held, which is only from Month to Month. It is for Necessity, the Sheriff may take and enter a Plaint before himself, whereon Replevin shall be made, and after return it into the County-Court, that so the Cattle may not perish: And for the greater Ease in bringing Replevins, it is provided by 1 & 2 Ph. & Mar. cap. 12. That the Sheriff shall at the first County-Day, or within two Months after he receives his Patent, depute and proclaim in the Shire-Town, four Deputies not dwelling above twelve Miles from one another, who are to make Replevins and Deliverance of Distresses, in such Manner as the Sheriff himself may do; and the Sheriff shall hold Plea thereof, and determine the same in the County-Court. 2 Inst. 140, 139. 1 Keb. 205.

When any Cattle, &c. are distrained for Rent, or any other Cause, the Owner to replevy them, must go to the County-Clerk, or some one of the Deputies appointed by the Sheriff according to the Statute Ph. & Mar. for the Granting of Replevins, to have a Precept in Replevin, to retake the Goods or Cattle so distrained; and when such Replevin is granted, there must be a Bond taken of him to whom granted, or of some other for him, with one or more Sureties, that he will prosecute the Replevin: And then the Sheriff issues his Precept to his Bailiff, to replevy the Cattle immediately; whereupon he is to give Day unto both Parties, until the next County-Court, to the Defendant by Summons to appear; at which Day, the Plaintiff in the Replevin may be essoined, if his Plaint be entered: But if the Plaintiff makes Default, the Defendant may demand Judgment of the Nonsuit, and have a Return of the Distress; and

Replevins, and Ejectment. 275

and that the Plaintiff and his Pledges shall be *in Misericordia*. In this Prosecution the Defendant is not to be essoined, at the first Day so given; for if he make Default, the Distress shall at the same Court be awarded to the Plaintiff: But if both Plaintiff and Defendant appear on the first Day, either by Attorney or in Person, then the Plaintiff puts in his Declaration, to which the Defendant (commonly called the Avowant) is to plead by Avowry or otherwise, at the next Court after, when the Plaint is determined. *Comp. Sheriff* 78, 79.

If the Goods, or Cattle, &c. be not taken or delivered upon the first Precept, the Plaintiff may have an *Alias* or another Precept in Replevin: And if they are not delivered upon the *Alias* Replevin, nor sufficient Cause shewn why they were not, then the Plaintiff, *viz.* the Owner of the Cattle, may have a *Pluries*, or further Replevin, *vel Causam Signif.* And 'tis said, that after this may follow a *Toties quoties* Replevin: But this seems to be seldom used. On any of the Writs, if the Sheriff will not do Execution, or does not duly perform his Office, an Attachment shall be issued against him, directed to the Coroners of the County; or he may be amerced, and the Amercement return'd into the Exchequer: The like Law is, if he do not take Pledges, or takes insufficient Pledges: But in case the Sheriff delivers the Distress to the Plaintiff in Replevin, without Pledges to return it, if the Taking be judged lawful, the Sheriff must answer the Price thereof. *Reg. Orig.* 81. 1 *Inst.* 145.

Where the Cattle are impounded in any Franchise, the Bailiff there by Warrant from the Sheriff may, or if he do not, or will not, the Sheriff himself must replevy the Distress. And if the Bailiffs, upon any of the said Replevins *supra*, return at the

next County-Court, that the Cattle are *eloigned* or driven out of the County, &c. or any other Return, whereby they could not make Deliverance of the Cattle, for some Default of the Distrainer: Or if the Plaint be in a Franchise, and the Sheriff make his Precept to the Bailiff, who returns that he cannot come at the Goods, &c. The Sheriff ought to make Inquiry if it be true which is so return'd, and appearing accordingly, may make a Precept in Nature of a *Withernam*, to take so many of the proper Cattle or Goods of the Defendant or Party distraining, to the Value of those distrained by him, and in Lieu thereof, till such Party deliver the first Distress, &c. *Dalt.* 167.

In case the Sheriff refuses to award a *Withernam*; or if he issues his Precept to his Bailiff to take the other's Cattle in *Withernam*, and the Bailiff will not execute the Process, or the Party distrained cannot have the Cattle delivered thereupon in the County-Court for any other Cause; in either of these Cases, the Person distrained may have a special Writ of *Withernam* out of *Chancery*, directed to the Sheriff, commanding him to make Execution of the first Judgment, &c. If the Bailiffs executing this Writ, return that the Party who distrained hath not any Cattle, &c. to be taken in *Withernam*; then he whose Cattle are taken, shall have an *Alias Capias* in *Withernam*; and if the Bailiffs also return thereon a *Nihil habet*, the Party distrain'd may have a *Pluries* in *Withernam*, and so as often as a *Nihil* is returned *ad infinitum*; but there can be no other Remedy in the County-Court; for this Court cannot award Process of Exigent, &c. as the King's Bench or Common Pleas may, if a *Withernam* be returned there. *F. N. B.* 74. 68.

Replevins, and Ejectment. 277

On a *Withernam* in B. R. or C. B. If the Sheriff return that the Party hath not any Thing, &c. a *Capias* shall issue against him, *Alias* and *Pluries*, and so to Exigent and Outlawry: And there is some Difference, where the Defendant appears upon the Return of the *Pluries Capias*, and when he stays longer, and appeareth on the Return of the Exigent, and not before; for in the first Case, his Cattle shall not be taken in *Withernam*, but he must find Pledges to make Deliverance, or be committed; and in the last Case, he shall not only find Pledges for making Deliverance, but shall be fined, and his Cattle may be taken in *Withernam*: In either of the Cases, the Plaintiff may declare for the unjust Taking, and yet detaining of his Cattle, and go to Trial upon the Right; and if 'tis found for him, then he shall recover the Value of the Cattle with Costs and Damages, or may have the Cattle again by a *Retorno habendo* directed to the Sheriff; but if it be found for the Defendant, he shall keep the Cattle, and have Costs and Damages. 1 *Brownl.* 180. 3 *Nels. Abr.* 553, 554.

If Beasts distrained are put into a Castle or House, the Sheriff may break it and make Replevin, and cannot return he was resisted; for he may take the *Posse Comitatus* in such Cases: So if they are impounded in a Place inclosed, which has a Gate open, and as he comes to make Replevin, the Party stands at the Gate to shoot him; or if the Sheriff be otherwise there opposed, he may break the Close, and enter in any other Place to make the Replevin. The Plaintiff in Replevin, being he that is distrained, must have a general or special Property in the Goods: And if the Defendant claims the Property in the Things taken, in the County-Court, &c. before the same can be replevied, that Matter must first be decided before the

Sheriff, at the Suit of the Plaintiff, by Writ *De proprietate Probanda*, issued from the Courts above; and if on Trial thereof, it be found for the Plaintiff, the Sheriff is to make Replevin or Deliverance; but if for the Defendant, he is to do nothing in his Court, nor can he proceed if any Thing touching the Freehold comes in Question, &c. tho' the Plaintiff may replevy by Writ afterwards, and if the Sheriff returns the Property claimed upon such Writ, it may be put in Issue and try'd again in the Common Pleas, which shall finally determine it. 2 *Inst.* 105, 194. 2 *Roll. Abr.* 565. 1 *Inst.* 145, 148. *Finch* 316.

A Replevin ought to be certain, in setting forth the Number and Kinds of Cattle distrained, with the Time and Place, or it will not be good; for if it be uncertain, the Sheriff cannot tell how to make Deliverance of the Cattle, if a Writ be directed to him to do it. If when Replevin is brought, the Plaintiff make Default, or is Nonsuit before or after Declaration, or Judgment given against him, the Defendant in Replevin shall have the Writ *Retorno Habendo* of the Goods taken in Distress, &c. And where the Plaint is removed into C. B. if the Plaintiff in Replevin is nonsuited either before or after Avowry made, the Defendant may again distrain his Cattle for the same Cause; (but not otherwise; if he do, Writ of *Recaption* lies for Damage) yet the Plaintiff may sue out a Writ of *Second Deliverance* upon the same Record, which will revive the first Suit: And after this second Deliverance and Trial thereupon, or if the Plaintiff be again nonsuited upon a Declaration, then there must be awarded a *Returnum irreplegiabile* to the Defendant; and then he may make his Avowry, or Plea in Justification of his Distress, to ground a Writ of Inquiry of Damages; or he may

Replevins, and Ejectment. 279

may hold the Beasts 'till he is satisfied. *F. N. B.* 72. *Raym.* 33. *Hob.* 16. 3 *Salk.* 308.

If the Defendant makes Default, the Plaintiff shall have Judgment to recover all in Damages; the Value of the Cattle, and Damages for the Taking of them, and also his Costs: And in a Replevin, if the Jury do not inquire as well of the Value of Cattle distrained for Rent, that they may be sold according to the Statute, as also of the Rent due, there shall be no Writ of Inquiry to supply it. No Writ of *Second Deliverance* lies in Replevin after Judgment upon a Demurrer, or after a Verdict given; but in these Cases the Judgment must be entered with a Return irreplevisable, which if for the Plaintiff is a final Return of the Cattle as unjustly taken; though on a Nonsuit, a Second Deliverance will lie, because there is no Determination of the Matter, and then it lieth to bring the Matter into Question: But in the Case of a Demurrer and Verdict, 'tis determin'd by Law. *F. N. B.* 69. *Mich.* 8 *H.* 8. 1 *Lev.* 255. *Mich.* 7 *W.* 3.

A Second Deliverance may be a *Superfedeas* to the *Retorn. Habend.* but 'tis not so to the Writ of Inquiry for Damages; for they are not given for the Thing for which the Defendant avows, but by Virtue of the Stat. 21 *H.* 8. as a Recompence to the Avowant for his Expence and Trouble: In Action of Replevin, the Defendant avowed for Damage-feasant, and had a Verdict; it was adjudged, that he should have a *Retorno Habendo* for the Cattle, and a *Capias ad Satisfaciendum* for the Damages: But if the Party tender the Costs and Damages, the Sheriff ought not afterwards to execute the *Retorn. Habend.* And if for Want of such Tender, the Sheriff executes it, and after the Costs and Damages are paid; a Writ lieth upon Suggestion

tion of Payment of the Costs, to deliver the Distress, &c. 3 Cro. 162. 3 Salk. 54.

The Plaintiff in a Writ of Second Deliverance was nonsuited, and a Writ of Inquiry of Damages awarded, and also a *Retorno Habend.* upon which the Sheriff return'd *Averia Elongata*; whereupon a *Withernam* was granted, and all the other of the Plaintiff's Cattle were delivered to the Defendant; and some Time after the Plaintiff came into Court, and paid the Damages and Costs, on which the Court granted him a special Writ to restore his Cattle; but there was no Allowance for Keeping of them, it being intended that their Labour was worth the Charges. 3 Leon. 323.

In a Replevin for Taking four Beasts, the Defendant had Judgment for a Return; and he then surmised that forty Beasts were taken and impounded, and were not all delivered back, and pray'd that the Sheriff should make a Deliverance to him of forty, &c. But it was resolv'd, that the Plaintiff having declared but of four Beasts taken, and he the Defendant agreed that four only were taken by Avowing for them, he was therefore without Remedy: Though he might in his Avowry have shewn that forty Beasts were taken, and have avowed for all, and prayed a Return of all of them, altho' the Plaintiff had not declared for so many. Cro. Jac. 611.

Whatever Goods or Chattels are distrained, may generally be replevied; and if one distrain a Cow, which afterwards hath a Calf, &c. Replevin may be had for both: But no Replevin lies of Goods taken beyond the Seas, though brought afterwards into *England*; nor may it be against the King, nor where he is Party, or the Taking was in his Right. An Infant may bring Replevin; Husband and Wife shall join in a Replevin for a Distress taken
on

Replevins, and Ejectment. 281

on the Wife's Lands, and for Goods and Chattels taken of the Wife when sole, the Husband alone may have it: Executors or Administrators shall have it *de bonis Testatoris*. If the Beasts of several Men are taken, they must bring Replevin severally, and not join; unless they are Jointenants or Tenants in Common: A Replevin is triable by either Plaintiff or Defendant, without Proviso; and if a Man do distrain Cattle in one County, and drive them into another County, Replevin lies in either. *F. N. B. 69. 1 Inst. 145, 146. 2 Roll. Abr. 43. Show. 169.*

If one by Deed grant a Rent with Clause of Distress, and that he shall keep the Goods distrained against all Pledges, until the Rent be paid; yet the Goods taken in Distress may be replevied: For this is against its Nature, and by such an Invention the Course of Replevins would be overthrown, to the Prejudice of the Commonwealth. And by our Law, if a Man whose Goods are distrained, would have the Goods or Cattle restored, he may obtain them by Replevin; but if he be only desirous of a reasonable Satisfaction for them, he may bring an Action of Trespass or Trover, &c. If a Defendant in Replevin avows for a Rent-Charge, he need not answer what is laid as to breaking of Doors, &c. tho' in Action of Trespass he must do it. *1 Inst. 145. Trin. 7 W. 3. B. R. 2 Lill. Abr. 456.*

In Replevin the Defendant may avow, or justify; but if he justifies, he cannot have a Return, as he shall if he avows. On an *Avowry*, the Taker shall justify for what Cause he took the Distress, and also avow the Taking, if in his own Right; and if for another, make Cognizance thereof, as Bailiff, or Servant, &c. The *Avowry* is in Nature of a Declaration, and must contain sufficient Matter
for

282 Of Distresses for Rent,

for Judgment to have Return: But the Avowant is not driven to alledge Seisin, within the Time of the Statute of Limitations; tho' the Lord must have Seisin by the Hands of his Tenant in certain: Where Commencement of the Rent appears, Seisin is not material. 3 *Lev.* 204, 205. 7 *Rep.* 25. 1 *Inst.* 268. 8 *Rep.* 65.

One Avowry may be upon several Titles of Land; tho' it be but for one Rent: And Avowry may be made for Damage-feasant, &c. setting forth in the Complaint the special Damage, as in Action on the Case: The Defendant in Replevin need not aver his Avowry with an *Hoc paratus est verificare*; because such Defendant is the Actor, for therein he shews his Matter (or Complaint of Wrong done) which is a Count like unto a Plaintiff's, and prays to have Return, &c. 1 *Lill. Abr.* 159. 3 *Lev.* 104. *Plowd.* 342, 163.

By Statute 13 *Ed.* 1. *cap.* 2. If upon Replevins, Lords cannot obtain Justice in inferior Courts, a Writ is to be granted to remove the Plea before the Justices, where Justice shall be done them: And here the Avowry shall be upon the Seisin of any Ancestor, &c. The Sheriff or his Bailiffs shall not only take Pledges of the Plaintiff to prosecute his Suit, but also to return the Cattle, in Case a Return be awarded; and if they are otherwise taken, he shall answer the Lord for the Price of the Cattle, to be recovered by Writ or Action; and where the Bailiff is not able to restore them, his Superior shall do it. On the Writ of second Deliverance, the Sheriff shall take Surety for the Suit, and also of the Beasts to be returned, or the Price of them, if Return shall be adjudged.

The 21 *H.* 8. *c.* 19. ordains, That on a Replevin sued, an Avowry may be made by the Lord, or Cognizance and Justification, by his Bailiff or
Servant,

Replevins, and Ejectment, 283

Servant, upon the Land holden of the said Lord, without naming any Person certain to be Tenant thereof: The like Law is also upon every Writ sued of second Deliverance. In any *Replegiare*, or second Deliverance, for Rents, Customs, Services, or Damage-feasant, if the Avowry, Cognizance, or Justification, be found for the Defendant, or the Plaintiff be Nonsuit, or in any Manner barred, the Defendant shall recover such Damages and Costs as the Plaintiff should have had if he had recovered. The Executors and Administrators of Tenants distrained for Rent, &c. may lawfully make Avowry, by the *Stat. 37 H. 8. c. 37.*

By the Statute 17 *Car. 2. c. 7.* When a Plaintiff is nonsuit before Issue in any Suit of Replevin, removed into or depending in any of the Courts at *Westminster*, the Defendant making Suggestion in Nature of an Avowry for Rent; the Court on his Prayer, shall award a Writ to the Sheriff to inquire of the Sum in Arrear, and the Value of the Distress: Whereupon Notice of fifteen Days shall be given to the Plaintiff, or his Attorney in Court, of the Sitting of such Inquiry, and on Return of the Inquisition the Defendant shall recover the Arrears, if the Distress amounts to that Value; or else the Value of the Distress with Costs, and shall have Execution thereupon by Writ of *Fieri facias* or *Elegit*, or otherwise, as the Law shall require. If such Plaintiff be nonsuit after Avowry and Issue joined, or if the Verdict is against him, the Jury at the Defendant's Prayer may inquire, and the Avowant recover, &c. as abovesaid: And if Judgment be on Demurrer for such Avowant, the Court, at the Prayer of the Defendant, shall award a Writ to inquire of the Value of the Distress, whereupon he shall have Judgment and Execution, &c. *ut supra.* Here if the Distress shall not be found to be of the Value

Value of the Arrears, the Party may distrain for the Residue.

By 4 & 5 *Ann. c. 16.* The Defendant or Tenant, or Plaintiff in a Replevin, with Leave of the Court, may plead as many several Matters thereto as he shall think necessary for his Defence: Provided, if any such Matter upon Demurrer join'd shall be adjudged insufficient, Costs shall be given at the Discretion of the Court; or if a Verdict be found upon any Issue for the Plaintiff or Demandant, Costs shall also be given, unless the Judge certify that the Party had probable Cause to plead such Matter.

And by the late Statute 11 *Geo. 2. cap. 19.* All Defendants in Replevin, in Avowries and Cognizance upon Distresses for Rent, Quit-Rents, Heriots, and other Services, may avow or make Cognizance generally, that the Plaintiff in Replevin, or other Tenant of the Lands and Tenements whereon such Distress was made, enjoyed the same under a Grant or Demise at such a certain Rent, during the Time wherein the Rent distrained for incurred, which Rent was then, and still remains due; or that the Place where the Distress was taken, was Parcel of such certain Tenements, held of such a Lordship or Manor, for which Tenements the Rent, Heriot, or other Service distrain'd for, was at the Time of the Distress, and still remains due; without further setting forth the Grant, Tenure, Demise or Title of such Landlord, Lessor, or Owner of such Manor, &c. And if the Plaintiff in such Action shall become Nonsuit, discontinue his Suit, or have Judgment given against him, the Defendant shall have double Costs.

All Sheriffs and other Officers having Authority to grant Replevins shall, in every Replevin of a Distress for Rent, take in their own Names from the

Replevins, and Ejectment. 285

the Plaintiff, and two responsible Persons as Sureties, a Bond in double the Value of the Goods distrained, (such Value to be ascertained by the Oath of one or more credible Witness or Witnesses not interested in the Goods or Distress, which Oath the Person granting the Replevin is to administer,) conditioned for prosecuting the Suit with Effect, and without Delay, and for duly returning the Goods and Chattels distrained, in Case a Return shall be awarded before any Deliverance be made of the Distress.

And such Sheriff, &c. taking such Bond, shall at the Request and Costs of the Avowant, or Person making Cognizance, assign the Bond to him by indorsing the same, and attesting it under Hand and Seal, in the Presence of two Witnesses, &c. This may be done without Stamp, so as the Assignment indorsed be duly stamp'd before any Action brought thereon: And if the Bond thus taken and assigned be forfeited, the Assignee may bring his Action and recover thereupon in his own Name; and the Court where such Action shall be brought, may by a Rule of the same Court, give such Relief to the Parties upon the Bond, as may be agreeable to Justice and Reason; which Rule shall have the Nature and Effect of a Defeasance to such Bond.

A Pleint in Replevin entered in the County Court.

A. *B.* complains against *C. D.* of his Goods, Beasts or Cattle, unjustly taken, that is to say, &c. in his House, or Freehold, in the Parish of *B.* in the County of *S.* aforesaid.

Pledges { *E. F.*
 G. H.

Form of a Count, Avowry and Judgment in Replevin in C. B.

C. *D.* was summoned to Answer *A. B.* of a Plea, wherefore he took the Cattle or Beasts of the said *A.* and them unjustly detained against Sureties and Pledges, &c. And whereupon the said *A.* by, &c. his Attorney complains, that the said *C.* the Day of, &c. in the Year of the Reign, &c. at *S.* in a certain Place there, called, &c. took the Cattle, that is to say, three Horses and two Cows of the said *A.* and them unjustly detain'd, against Sureties and Pledges, until such a Day, wherein they were delivered by *T. K.* Esq; Sheriff of the County aforesaid, or Bailiff of the Lord the King, sworn and acknowledged, &c. Whereupon he saith, that he is the worse, and hath Damage to the Value of 10 *l.* and therefore he brings his Suit, &c. And the said *C.* by his Attorney comes and defends the Force and Injury, when and where, &c. and well avows the Taking of the said Cattle, in the said Place in which, &c. And justly, because he saith, (the Avowry setting forth the Estate in the Land

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and

Replevins, and Ejectment. 287

and Cause of the Distress, with the Answer, Replication, Issue and Special Verdict of the Jury, are here inserted). And because the Justices here, will advise themselves of and upon the Premises, before they give Judgment, Day is given to the Parties aforesaid until the Day, &c. to hear their Judgment thereof, because the said Justices are not yet advised, &c. At which Day here comes as well the said *A.* as the said *C.* by their Attornies aforesaid; and upon this the Premises aforesaid being seen, and by the Justices here fully understood: It is considered, that the said *A.* take nothing by his Writ aforesaid, but be in Mercy, for his false Claim, &c. And that the said *C.* go thereof without Day, &c. and that he have Return of the said Cattle, to be kept by him irreplegiabie for ever; and how, &c. the Sheriff is to make it here appear in, &c. It is also considered, that the said *C.* do recover against the said *A.* his Damages by the Jurors in Form aforesaid assessed; as also, &c. for his Expences and Costs, by the Court here of Increase, with his Assent adjudged; which Damages in the Whole amount to, &c.

Ejectment is a Writ or Action that lieth for a Lessee for Years, who is ejected out of his Lands before the End of his Term, either by the Lessor, or a Stranger: And may be also brought by a Lessor against the Lessee, for Rent in Arrear, or holding over his Term, &c. A Copyholder may not bring Ejectment; but the Lessee of a Copyholder for one or more Years, may do it. And Ejectment is now become an Action in the Place of many Real Actions to recover Lands, as Writs of Right, Formedons, &c. which are more difficult and chargeable. *Reg. Orig.* 227. 4 *Rep.* 26.

Anciently

Anciently Writs of *Entry* and *Affise* were the usual Means of Recovery of the Possession of Lands and Tenements, and lay only against Freeholders; but in the Year 14 *H.* 7. it was resolved, that an *Habere facias possessionem* would lie to recover and gain the Term in Ejectment, and also the Land itself. Tho' the Action of *Ejectione firmæ* was never known to remove a Possession till the Reign of K. *Hen.* 8. before which Time, an Action of Trespass *Quare Clausum fregit, &c.* was made use of: But in Action of Trespass, Damages were only to be recovered; whereas in Ejectment, the Thing or Term itself is recoverable, as well as Damages. 3 *Leon.* 40. *Attorn. Comp.* 170.

In the proceeding in Ejectment, the Method is made more easy than formerly; when a Lease was to be sealed and delivered on the Premises to the Lessee, &c. The Ejector in Law was any Person that came upon any Part of the Land, mentioned in the Lease of Ejectment, tho' he were there without any Intent to disturb the Lessee of the Possession, after the Sealing of the Ejectment Lease; and such Ejector was a good Ejector, against whom an Action of *Ejectione firmæ* might be brought to try the Title of the Lands, &c. in Question: But now the Law is altered; for there is no Occasion for a Lease to be made and sealed upon the Premises to the Lessee, who hath a Mind to try the Title, and to leave the Lessee in Possession to be ousted and ejected by the Tenants in Possession, &c. Yet it is observed, that where Entry is taken away by Discents, Fines and Recoveries, Disseisins, &c. Ejectment may not be brought; so that all Titles cannot be tried by this Action. *Wood's Inst.* 547. See *Attorn. Compan.* 170, 173.

The usual Course at this Time, in Action of Ejectment when brought, is to draw a Declaration,

tion, and therein feign a Lease for three, five, or seven Years, to him that would try the Title, and also feign a casual Ejector or Defendant in the Declaration, and then deliver the Declaration to the Ejector, who serves the same by delivering a Copy thereof on the Tenant in Possession, or his Wife, and gives Notice at the Bottom for him to appear and defend his Title; which must be read to the Tenant, and the Person serving it, is to tell him, that if he do not procure some Attorney to appear for him and defend his Title, in Default thereof, that he (the Defendant) will suffer Judgment to be had against him, whereby he (the Tenant) will be turned out of Possession. The Declaration being thus served, the Tenant is to appear the Beginning of the next Term by his Attorney, and consent to a Rule to be made Defendant instead of the casual Ejector, and take upon him the Defence; wherein he may confess a *Lease, Entry and actual Ouster*, and at the Trial insist upon the Title only. But if the Tenant in Possession doth not appear, and enter into the aforementioned Rule in Time, after the Declaration serv'd; then on *Affidavit* made of the Service of the Declaration, with Notice to appear as aforesaid, the Court will order that Judgment be entered against the casual Ejector by Default; and the Tenant in Possession will, by an *Habere facias possessionem* upon such Judgment, be turned out of Possession. 1 *Lill. Abr.* 499.

If the Tenant appears, having by his Attorney filed common Bail, and entered into the Rule above mentioned, he is made Defendant in the Declaration, and put into the same in the Place of the casual Ejector; and then the Defendant's Attorney must plead *Not guilty*: And the Plaintiff's Attorney draws up the Issue, a Copy whereof and

of the Declaration is to be delivered to the Attorney for the Defendant; whereupon Notice is given of Trial: In order to which, the Writ of *Venire, &c.* to bring in the Jury is to be made out and returned, and the *Record* made up by the Plaintiff's Attorney, beginning with the Declaration; which being sealed, the *Breviate* is to be prepared for Counsel, in which after a short Recital of the Declaration and Plea, the Plaintiff's Title is to be briefly set forth, from the Person last seized in Fee of the Premises, under whom the Lessor claims, down to the Client the Plaintiff, proving the Deeds, &c. and after Trial, the Proceedings are as in other Cases. At the Trial, if the Defendant will not confess Lease, Entry and Ouster, it is usual to call him or his Attorney, and then call the Plaintiff and nonsuit him; and upon Return of the *Poslea* of the Cause, Judgment will be given against the casual Ejector: But in this Case, tho' the Plaintiff be nonsuit, he shall not pay any Costs; for the Rule for confessing Lease, Entry, &c. is to be carried to the Secondary, who taxes the Costs upon it to be paid by the Defendant; and if the same are not paid, the Court on Affidavit and Motion will grant an Attachment against him; this is where the Defendant appears, and not where it goes wholly against him by Default. 1 *Lill.* 503, 504. *Pract. Solic.* 328, 329.

A Plaintiff shall recover only according to the Right which he hath at the Time of bringing his Action: And one who hath Title to the Lands or Premises in Question, may upon moving the Court be made a Defendant in the Action with the Tenant in Possession, to defend his Title. As here the Possession of the Lands is primarily in Question, and to be recovered, that concerns the Tenant; and the Title of the Land, which is tried collaterally, that

Replevins, and Ejectment. 291

that is concerning some other, who may therefore be admitted to be a Defendant with such Tenant: But none shall be so admitted, but he that hath been in Possession, or receives the Rents, &c. When there is a Recovery in Ejectment by Verdict; Action of Trespass may be brought, to recover the mesne Profits of the Lands, from the Time of the Defendant's Entry laid in the Declaration: And this Action may be prosecuted either by the Plaintiff in Ejectment, or by the Lessor of the Plaintiff; tho' when the Plaintiff brings it, he need only at the Trial to produce his *Postea* of the Recovery; but where the Lessor brings the same, he must prove his Title over again, if it be insisted on by the other Side, otherwise he will be nonsuited. 1 *Nelf. Abr.* 694. 1 *Lill.* 497, 499.

No Arrest is to be made in this Action, as now commonly practised; only a Declaration in Ejectment is served, &c. And if it appears that the Plaintiff was ejected after the Lease made, it is sufficient, tho' no certain Day be alledged in which it was done; for the Day is not material, being before the Action brought: But the Time of the Plaintiff's Entry must be shewn, that it may appear he was not a Disseisor, by entering on the Lands before his Term commenced, &c. Also where Lands in the Lease, or other Deed, differ from those in the Declaration, and are not exactly the same; or the Term is different, tho' the Plaintiff hath a Verdict in Ejectment, he cannot have Judgment thereon. If there be a Judgment against the Plaintiff, he may bring another Action of Trespass and Ejectment for the Lands, it being only to recover the Possession, &c. wherein Judgment is not final; and 'tis not like a Writ of Right, where the Title alone is tried. 2 *Cro.* 311. 2 *Lutw.* 963. *Trin.* 23 *Car. B. R.*

As many Demises may be laid in a Declaration, as shall be thought fit; and if the Plaintiff recovers upon one, it is sufficient *pro tanto*: And if one having Title to a Part only of Lands, bringeth an Ejectment for the Whole, he shall recover his Part of the Lands. But if there be no Tenant in Possession of the Premises; as where a House or Land is empty, and the Person that was last in Possession is run away, so that you cannot find any Person to deliver the Declaration to, then the Process, as hitherto generally used, must be in the old way, by sealing a Lease upon the Ground; and an original Writ is to be sued out against the Person who ejected the Lessee, and then Ouster and Ejectment, &c. And herein Affidavit is to be made of the Sealing the Lease and the Entry, and Rules are to be given to plead; tho' there cannot be Judgment against the casual Ejector, without a Motion for that Purpose, after the Rules for Pleading are out. An Ejectment was brought for Non-payment of Rent; and the Court was moved to stay the Proceedings, upon Payment of the Rent and Costs, to be adjusted by a Secondary, which the Court granted; and also ordered a new Lease to be made at the Defendant's Costs. 3 *Lev.* 334. *Plowd.* 429. 1 *Lill.* 498, 501. 1 *Salk.* 255. *Mich.* 8 *W.* 3.

By Statute 4 *Geo.* 2. c. 28. In all Cases between Landlord and Tenant, as often as one Half Year's Rent shall be in Arrear, and the Landlord hath Right by Law to re-enter for Non-payment, such Landlord may, without any formal Demand or Re-entry, serve a Declaration in Ejectment; or in case the same cannot be legally served on the Tenant, he may affix the same upon the Door of any demised Messuage, or on some notorious Place of the Lands, &c. comprized in such Declaration; which shall be deemed a legal Service thereof, and stand instead

Replevins, and Ejectment. 293

instead of a Demand and Re-entry: And in Case of Judgment against the casual Ejector, or Non-suit for not confessing Lease, Entry and Ouster, if it shall be made appear to the Court by Affidavit, or be proved upon the Trial, when the Defendant appears, that Half a Year's Rent was due before the Declaration was served, and no sufficient Distress was to be found, and that the Lessor in Ejectment had Power to re-enter; then the Lessor shall have Judgment and Execution, in the same Manner, as if the Rent due had been legally demanded, and a Re-entry made. And if the Lessee, or other Person claiming under the Lease, shall suffer Judgment to be had and recovered, and Execution to be executed thereon, without paying the Rent and Arrears with Costs; and without filing a Bill for Relief in Equity, within six Kalendar Months afterwards; then the said Lessee, and all Persons claiming under the Lease, shall be barred of all Remedy, other than by Writ of Error; and the Lessor shall hold the Premises discharged from such Lease, &c. Provided, that nothing herein shall bar the Right of any Mortgagee of such Lease, who shall not be in Possession, so as such Mortgagee, within six Months after the Execution executed, pay all Rent in Arrear, and Costs and Damages, and perform all Covenants and Agreements on the Part of the first Lessee.

In Case the Lessee, his Assignee, or other Person, claiming any Right, or Interest, in or to the said Lease, shall within the Time aforesaid, file a Bill for Relief in any Court of Equity, such Person shall not have any Injunction, against the Proceedings at Law on the Ejectment, unless he shall in forty Days after full Answer, filed by the Lessor of the Plaintiff in such Ejectment, bring into Court such Sum of Money, as the Lessor

shall in his Answer swear to be due and in Arrear, over and above all just Allowances, and also the Costs taxed in the said Suit, there to remain till the Hearing of the Cause; or to be paid out to the Lessor or Landlord, on good Security, subject to the Decree of the Court: And in Case such Bill shall be filed within the Time aforesaid, and after Execution executed, the Lessor of the Plaintiff shall be accountable only for so much as he shall really without Fraud or wilful Neglect make of the demised Premises, from the Time of his entering into the actual Possession thereof; and if what shall be so made by the said Lessor, happen to be less than the Rent reserved on the Lease, then the Lessee or Assignee, before he shall be restored to his Possession, shall pay to the Lessor what the Money made fell short of the reserved Rent, for the Time such Lessor held the said Lands.

But if the Tenant or Lessee, or his Assignee, shall at any Time before Trial in the Ejectment, pay or tender to the Lessor or Landlord, or his Attorney in that Case, or pay into the Court where the same Cause is depending, all the Rent and Arrears, together with the Costs, then all further Proceedings on the Ejectment shall cease, and be discontinued; and if such Lessee, &c. shall upon such Bill filed be relieved in Equity, he shall enjoy the Lands demised, according to the Lease, without any new Lease to be thereof made to him.

By the Statute 11 Geo. 2. c. 19. To prevent Inconveniencies that have happened to Landlords, by their Tenants secreting Declarations in Ejectment, which have been delivered to them, or by refusing to appear to such Ejectments, &c. it is enacted, That every Tenant, to whom any Declaration

Replevins, and Ejectment. 295

claration in Ejectment shall be delivered, for any Lands, Tenements or Hereditaments, shall forthwith give Notice thereof to his Landlord, or his Bailiff or Receiver, under the Penalty of forfeiting three Years improved or Rack-Rent of the Premises, demised or holden in the Possession of such Tenant, to the Person of whom he holds the same; to be recovered by Action of Debt, brought in any of his Majesty's Courts of Record at *Westminster, &c.*

And the Court where such Ejectment shall be brought, shall suffer the Landlord to make himself Defendant, by joining with the Tenant to whom the Declaration shall be delivered, if he shall appear; but if such Tenant refuses or neglects to appear, Judgment shall be signed against the casual Ejector for want of such Appearance: But if the Landlord shall desire to appear by himself, and consent to enter into the like Rule, that by the Course of the Court the Tenant in Possession, in Case he had appeared, ought to have done; then the Court shall and may permit the Landlord so to do, and order a stay of Execution upon the Judgment against the casual Ejector, until they shall make further Order therein.

The Form of a Declaration in Ejectment in B. R.

Gloucester, ss. **A.** B. complains of C. D. being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself; for that *E. T.* Gentleman, on the Tenth Day of *August* in the Twelfth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, King of *Great Britain,*

Britain, &c. at *M.* in the County of *Gloucester* aforesaid, had demised, granted, and to Farm let to the said *A.* one Messuage, one Garden, and ten Acres of Arable Land, &c. (reciting the Parcels) with the Appurtenances, situate, lying and being in the Parish of, &c. in the said County of *Gloucester*; To have and to hold the said Tenements, with the Appurtenances, to the said *A. B.* and his Assigns, from the Twenty-fourth Day of *June* then last past, unto the full End and Term of five Years, from thence next ensuing, and fully to be compleat and ended: By Virtue of which said Demise, he the said *A.* entered into the said Tenements with the Appurtenances, and was thereof possessed; until the said *C.* afterwards, that is to say, on the same Tenth Day of *August* in the Year, &c. aforesaid, entered with Force and Arms into the said Tenements, with the Appurtenances, in and upon the Possession of the said *A.* and ejected, drove out, and removed the said *A.* from his said Farm, during his said Term not yet expired; and the said *A.* being so ejected, drove out and removed, the said *C.* hitherto hath with-held from him, and still doth with-hold the Possession thereof, and then and there other Injuries brought upon or did to him, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *A.* twenty Pounds; and thereupon he brings his Suit, &c.

The Notice to the Tenant in Possession.

To Mr. G. H. at, &c.

I Am informed that you are in Possession of, or claim Title to the Premises mentioned in this Declaration of Ejectment, or to some Part thereof; and I being sued in this Action as a casual Ejector, and having no Claim or Title to the same, do advise you to appear on the first Day of next *Hillary* Term, in his Majesty's Court of *King's Bench* at *Westminster*, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my Stead; otherwise I shall suffer a Judgment to be entred against me, and you will be turned out of Possession.

Your Loving Friend

C. D.

A Lease in Ejectment in the old Way.

THIS Indenture made the three and Twentieth Day of *May* in the Twelfth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, &c. and in the Year of our Lord One Thousand seven Hundred and Thirty-nine, Between *E. F.* of the Parish of, &c. in the County of *G.* Yeoman, of the one Part, and *A. B.* of the same Place Gentleman, of the other Part, witnesseth that he the said *E. F.* for divers good Causes and Considerations him thereunto moving, hath demised, granted, and to Farm letten, and

298 **Of Distresses for Rent, &c.**

and by these Presents doth demise, grant and to Farm let unto the said *A. B.* all that his Messuage, commonly called or known by the Name of, &c. situate, lying and being in, &c. aforesaid, and one Garden, and ten Acres of Land, &c. thereunto belonging and appertaining: To have and to hold the said Messuage and Premises, with the Appurtenances, from the Date of these Presents, for and until the full End and Term of five Years, from thence next ensuing, and fully to be compleat and ended. Provided always, and upon Condition, that if the said *E. F.* his Executors or Administrators, shall at any Time after the thirtieth Day of this present *May*, tender to the said *A. B.* his Executors or Administrators, one Shilling, to the Intent to make void this present Indenture; then this Indenture, and every Thing therein contained, shall be void and of none Effect, (any Thing herein contained to the contrary in any wise notwithstanding). *In Witness* whereof the Parties above named have hereunto interchangeably set their Hands, &c.

Of Copyhold Estates granted for Lives and in Fee, Lords and Tenants, and Forms of Grants, Admittances, Surrenders, &c. with other useful Precedents, relating to Estates,

A Copyhold Tenant is such who holds Lands or Tenements of his Lord, for Life, or in Fee, by Copy of Court-Roll, made by the Steward of the Lord's Court: And a Copyholder in former Times, had but an Estate at Will, in Judgment of Law; but now by the Custom of the Manor, these Estates are descendible, and the Heirs of the Tenants shall inherit them. *Lit. Ten.*

If a Man be seised of a Manor, where there is a Custom, which hath been used Time out of Mind of Man, that certain Tenants within the same Manor have used to have Lands and Tenements, to hold to them and their Heirs in Fee-simple, or Fee-tail, or for Term of Life, &c. at the Will of the Lord, according to the Custom of the Manor; these are Tenants by Copy of Court-Roll, but no other Tenants hold by Copy: And tho' Copyholders have an Inheritance according to the Custom of the Manor, as they have no Freehold at Common Law, they are called Tenants by base Tenure. *Lit. Sect. 73. 1 Inst. 58, 62.*

The learned Judge *Fitzherbert* says, the Copyhold Estate was anciently *Tenure in Villenage*, and that Copyhold is but a new Name for it: Yet some
Copy-

Copyholds are held by the Verge in *Ancient Demesne*, and tho' by Copy, they are a Kind of Freehold; for if a Tenant of such a Copyhold commit Felony, the King hath Year, Day and Waste, as in Case of Freeholders: The other Copyholds are such as the Tenants hold by common Tenure, called meer Copyhold, whose Land upon Felony committed, escheats to the Lord of the Manor. But Copyhold Land cannot be made at this Day; for the Pillars of a Copyhold Estate are, That it hath been demised Time out of Mind by Copy of Court-Roll; and that the Tenements are Parcel of or within the Manor. *Kitch.* 81. 1 *Inst.* 58. 4 *Rep.* 24.

It is observed, that tho' Copyholders were formerly Tenants at Will of the Lord, their Lands being Parcel of the Lord's Demesnes; now they stand on a surer Foundation, if they perform those Duties which their Tenure requires: For if the Lord turns them out of their Estates, they may either sue a *Subpœna* out of Chancery to be relieved, or have an Action of Trespass against the Lord; because altho' they are Tenants at Will of the Lord, yet they are Tenants at Will according to the Custom of the Manor, which the Lord cannot break without Reason. Custom is the Life and Soul of Copyhold Estates; for if Copyholders break their Custom, they are subject to the Lord's Will: Though the Customs of Manors are so various, that it is impossible to ascertain them; they must however, be Time out of Mind, and be reasonable, according to common Right; they must be upon good Consideration; they ought to be certain, and to be beneficial to the Lord or Tenant: And if there are no Customs to direct Copyhold Estates, they must be directed by the Rules of the Common

Common Law. 1 *Inst.* 60. 4 *Rep.* 21. 9 *Rep.* 79.
1 *Inst.* 58. *Coke's Comp. Cop.* 33.

If the Lord will turn out his Copyholder, who payeth his Customs and Services; or will not admit him to whose Use a Surrender is made; or will not hold his Court for the Benefit of a Copyholder; or will exact arbitrary Fines, when they are customary and certain, the Copyholder shall have a Writ of *Subpœna* to restrain or compel him, as the Case shall require. Equity will oblige the Lord to hold a Court; for no Action on the Case lieth against him, if he refuses; and therefore there is no Remedy but in Chancery: In case an erroneous Judgment be given in a Copyhold Court in a *Formedon* or the like, a Bill may be exhibited in the Chancery to reverse it; for this Court has exercised a Jurisdiction in rectifying and reversing the Judgments of Copyhold Courts, when ever they have appeared unjust and unreasonable; but for any Errors in Matter of Form, it will not interpose. *Cary* 3, 4. *Cro. Jac.* 368. 2 *Bulst.* 336. 1 *Roll. Abr.* 373. 60. *Owen* 63. *Moor* 68.

Every Lord of a Manor hath a Court-Baron within his own Precinct: It is inseparably incident to Manors, and must be held by Prescription. A Court-Baron holden out of the Manor is void; but if a Man be Lord of two or three Manors and there is a Custom to hold a Court at one for all of them; such Courts by Custom are good: This Court is of two Natures; the first by the Common Law, which is called the Freeholder's Court, or Court-Baron, and of this the Suitors are Judges, and the Steward is Register; and this Court may be kept from three Weeks to three Weeks, and has Jurisdiction for trying of Actions of Debt, or Trespas, under 40 s. &c. The Second is a customary Court, and concerns Copyholders, of which the
Lord,

Lord, or his Steward, is Judge; this is held but once or twice in a Year, unless it be on a special Occasion, and is for taking and passing of Estates, Surrenders, Admittances, &c. As the first cannot be without Freeholders, so this cannot be without Copyholders: And a Court-Baron may be of this double Nature, and then the Rolls contain Matters concerning both of them. 1 *Inst.* 58. 4 *Inst.* 268. 4 *Rep.* 26. 6 *Rep.* 11.

My Lord Coke, in his Comment upon *Littleton*, tells us, that Copyholders shall neither implead or be impleaded for their Tenements by Writ, but by a Plaint entered in the Court-Baron; and that if upon such Plaint an erroneous Judgment is given, no Writ of false Judgment will lie in Respect of the Baseness of the Estate; it being in the Eye of the Law, but an Estate at Will; but his Remedy is by Petition to the Lord in Nature of a Writ of false Judgment, and therein to assign Errors. 'Tis true in the *Fourth Report*, he says, a Lessee of a Copyholder for a Year shall maintain an Ejectment; because his Term for one Year being warranted by the general Custom of the Realm, 'tis reasonable that he should have a more speedy Remedy by Ejectment to recover the Possession: But if he brings an Ejectment, he must declare upon the Custom, on the Lease, and the Ejectment; otherwise it will not lie. 1 *Inst.* 60. 4 *Rep.* 26. *Moor* 679.

In Making of *Grants*, Lords of Manors have large Power; for in a voluntary Grant made by the Lord himself, it is said the Law respecteth not the Quality of his Person, nor the Quantity of his Estate: If he be an Infant, or *Non Compos*, an Idiot, outlawed, or excommunicate Person, notwithstanding these are Disabilities at Common Law, yet he is capable of Making a voluntary

Grant by Copy, if his Title to the Estate be good and lawful. And it is not material, whether the Lord's Estate is Fee-simple, Fee-tail, or as Tenant by the Curtesy, for Life, Years, or at Will, as Guardian, by Statute, &c. the least of these Estates is sufficient to the Lord to grant a Copyhold: Such a Person is *Dominus pro tempore*; and may grant Lands and Tenements within the Manor, Herbage of Lands, a Fair, Mill, Tithes, &c. and any Thing that concerns Lands, by Copy of Court-Roll, according to Custom; the Rent and Services reserved by them shall be annexed to the Manor, and attend the Owner thereof, after the particular Estates are ended. 4 Rep. 23. 11 Rep. 18.

If the Lord of a Manor have a defeasible Title, or one be a Disseisor, he may make Admittances; but he cannot make any Grants, to bind the Disseisee. An Executor may make Grants of Copyhold Estates, according to Custom, tho' he hath nothing in the Manor, where a Devise is that the Executor shall grant Copies of such Tenements for Payment of Debts: And a Copyholder doth not derive his Estate out of the Estate or Interest of the Lord only; for then the Copyhold Estate would cease, when the Estate of the Lord determined; but the Copyholder is in by Custom. 1 Inst. 58. 4 Rep. 23. 2 Danv. Abr. 178.

A Manor may be granted by Copy of Court-Roll, according to Custom; and a customary Manor may be holden of another Manor, and such customary Lord may grant Copies and hold Courts: But a Copyholder Lord of such a Manor cannot hold a Court-Baron to have Forfeitures, and hold Pleas in a Writ of Right, &c. It has been adjudged, that within one Manor, there may be another Manor demisable by Copy, and that within that Manor there may be customary Tenants at Will,
according

according to the Custom; for as there may be a Tenant at Will of a Manor at Common Law, so there may be according to the Custom of the Manor: If a Widow having Dower of a Manor, hath the third Part of the Manor assigned her by that Name, she will have a Manor, and may keep Courts, and grant Copies, &c. But a Manor is lost when there are no customary Tenants, or Copyholders. 11 Rep. 17. 2 Cro. 326. 1 Bulst. 57. Godb. 135.

All Grants of Copyhold Estates must be according to the Custom of the Manor, and Rents and Services Customary must be reserved; for what Acts of the Lord in granting Copyholds are not confirmed by Custom, but only strengthened by the Power and Interest of the Lord, have no longer Duration than the Lord's Estate continueth: And tho' a Lord of a Manor for Life, may grant a Copyhold according to Custom; yet he may not licence a Tenant to make a Lease for Years; if he does, such Lease shall continue no longer than the Life of the Lord. A Grant upon an usurped or unlawful Title, shall never bind the right Owner, but that by Action or Entry he avoid it: The Law in these Cases, will not support a Custom which tends to the Disinheriting of the Owner. Comp. Court-Keeper 421. 2 Danv. 202.

If by the Custom, Copyholds may be granted for three Lives, a Copy may be granted to Three for the Lives of Two within the Custom; and tho' it is for the Life of another, there shall not be any Occupancy thereof, but the Lord shall have it, if the Tenant for the other's Life die, living the *Cestuy que vies*; and this is not a greater, but a less Estate than the Custom Warrants: But if where there is such a Custom, the Lord grants a Copyhold to one for his Life, Remainder to such

Woman as he shall marry, and to the first Son of his Body; both these Remainders are void, tho' the Estate for his own Life is good. If the Custom of the Manor be, that the Lord may grant the Copyholds in Fee, he may grant them for Life, Years, or in Tail, altho' there were never any such Estates made before; for these Estates are included within a Fee which is the greater Estate: And after the Death of Tenant for Life, the Lord may grant the same again in Fee, for the Grant for Life was not any Interruption of the Custom. *2 Danv. Abr. 203. 1 Inst. 52. Moor 677. 1 Leon. 56.*

By Custom where Copyholds are demisable in Fee, a Surrender may be to the Use of one for Life, Remainder in Tail, and Remainder in Fee, &c. But a Remainder limited or granted upon a void Estate in the Creation, will be likewise void. The Lord of a Manor may himself grant a Copyhold Estate at any Place out of the Manor; but the Steward cannot do it, tho' he may take Surrenders out of the Manor, as well as the Lord: As a Steward is in Place of the Lord, he may generally grant Lands by Copy, &c. But if he diminishes the ancient Rents and Services, the Grant will be void. If Things of Necessity are done by a Steward, who is but in reputed Authority, they are good if they come in by Presentment of the Jury; as the Admittance of an Heir upon Presentment, &c. Though voluntary Acts, as Grants of Copyholds, &c. are not good by such Steward. *Cro. Eliz. 373, 699. 4 Rep. 26.*

A Copyholder may not convey his Copyhold Estate to a Stranger without Surrender and Admittance; but he may grant his Estate out of Court to the Lord of the Manor, by Bargain and Sale, or Release, &c. for between Lord and Tenant the

Conveyance need not be according to Custom, which is only between Tenant and Tenant. In other Cases, the Copyholder cannot alien by Deed: But he that hath a Right only, to a Copyhold, may by Deed release it; and if a Copyholder surrenders upon Condition, he may afterwards release the Condition; also one joint Copyholder may release to another, which will be good without Admittance, &c. 1 *Inst.* 58. 1 *Keb.* 808. 1 *Nels. Abr.* 504. 2 *Danv.* 205. *Cro. Jac.* 36.

Altho' a Man may not grant any Thing to his Wife, they being both one Person in Law; yet a Feme Covert or married Woman may receive a Copyhold Estate by Surrender from her Husband, because she comes not in immediately by him, but by the Admittance of the Lord, according to the Surrender. But the Wife cannot give and Surrender her Copyhold Lands to her Husband; for that would be as it were the Act of the Husband to convey the Land to himself; therefore where such a Custom was alledged, it was held to be an unreasonable Custom; and because the Wife being always *sub potestate viri*, it shall be intended, that her Lands were not voluntarily given to him, but by Compulsion. 4 *Rep.* 29. *Godb.* 14, 15.

A Lord of a Manor may not only Grant, but may make *Admittances* in any Place out of his Manor; and may give Licence to Copyholders to alien by Deed. There are three Sorts of Admittances, *viz.* upon voluntary Grants, Surrenders, and Discents: In Admittances in Court, on voluntary Grants, the Lord is Proprietor; in Admittances upon Surrender, the Lord is not Proprietor of the Lands, but only a necessary Instrument of Conveyance; and in Admittances by Discent, the Lord is a meer Instrument, not being necessary to strengthen the Heir's Title, but only to give the
Lord

Lord his Fine. And in the two last Cases of Admittance, no Respect is had unto the Estate of the Lord in the Manor; for whether he hath it by Right or by Wrong, it is not material; these Admittances shall not be called in Question for the Lord's Title, because they are judicial Acts, which every Lord is enjoined to execute. 4 Rep. 22, 27.

In voluntary Admittances, if the Lord admits any one contrary to custom, either as to the Rent reserved, or any other Particular, this shall not bind his Heir or Successor. And Admittance on a Surrender must in all Things agree with the Surrender; the Lord having only a customary Power to admit *secundum formam & effectum Sursumred-ditionis*: If a Man surrenders with Reservation of Rent, and the Lord admits not reserving it, or reserving less Rent than in the Surrender, this Admittance is void; so if I surrender upon Condition, and the Lord omits the Condition: And Admittance by the Lord to a wrong Person is void, but in such Case the Lord must make a second Admittance to the right Person, who will enjoy the Estate. 4 Rep. 26. 2 Danv. Abr. 187, 204.

A Copyholder in Fee surrendered to the Lord, without mentioning to whose Use; and at the next Court he and his Wife were admitted to hold to them in Tail, Remainder to his own right Heirs; it was here adjudg'd, that tho' no Use was limited in this Surrender, yet the Copyholder being in before he made it, and afterwards accepting a new Admittance, the Law intends that the Surrender was to the Use mentioned in the Admittance; because the Surrender was made to the Lord, who is only an Instrument to convey the Estate being Copyhold: And 'tis like a Will, where an Estate shall pass by the *Habendum*, tho' the Party is not named in the Premises. Poph. 125. Cro. Eliz. 582.

If Surrenders are made to a Lord who hath a particular Estate in a Manor, and his Estate determines before the Admittances are made; accordingly the next Lord is compellable to do it: This is by Reason nothing passes out of the Lord but to answer the Purposes of the Surrenderor, by whom the Surrenderee after Admittance shall be said to be in, and not by the Lord; for if the Lord admit the Surrenderee to a larger Estate than limited by the Surrender, yet no greater passes. Where by the Act of God it becomes impossible to admit according to the Surrender, then the Admission as near to the Surrender as possible shall be good: As if one Surrender to the Use of himself for Life, Remainder to *A. B. &c.* If the Surrenderor dies, *A. B.* shall be admitted; so if the Surrender had been to *J. S.* in Fee, and *J. S.* had died, the Heir should be admitted. 4 Rep. 28. 1 Roll. Rep. 237, 317. Dyer 251. 2 Sid. 38, 61.

The Heir by Discent of a Copyhold, where there is no Surrender, is to most Intents a perfect Tenant of the Land immediately upon his Ancestor's Death; for he may enter into the Lands before Admittance, take the Profits, punish any Trespas done upon the Ground, and may surrender to whose Use he pleaseth, before his Admittance: But he is not a compleat Tenant to be sworn of the Homage, or to maintain a Plaint in the Lord's Court. And the Lord may nevertheless seise the Estate, if the Heir do not come in to be admitted, on Proclamation made in Court: For the Custom of every Manor is compulsory in Point of Admittance, and either upon Pain of Forfeiture of their Copyhold, or of incurring some great Penalty, the Heirs of Copyholders are obliged to come into Court, and be admitted according to the Custom, within a short Time after Notice given of
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the Death of their Ancestors. With Respect to others who claim under a Copyholder, it is as if the Heir had been admitted; and it would be unreasonable that a third Person should be prejudiced by his Delay of the Admittance. 4 Rep. 21. Moor 125.

If the Heir of a Copyholder in Fee, being of Age, do not come in and be admitted, upon three solemn Proclamations, made at three several Courts, if the Death of his Ancestor be presented, he may forfeit his Estate; and it is said the Lord may seise *quousque*, on the first Proclamation to be admitted, otherwise the Tenants might be possibly near three Years in Possession of the Estate, before the Lord would be intitled to his Services, or g. t the Fine paid. But if an Infant comes not in to be admitted, it is no Forfeiture; so of one beyond Sea, &c. And by particular Custom these Forfeitures may be mitigated, and the Copyholder only amerced. By a late Statute, on Default of Infants and Feme Coverts appearing to be admitted Tenants to Copyhold Lands, the Lord or his Steward may name a Person to be Guardian or Attorney for them, and by such Guardian, &c. admit them; and if the usual Fine thereon be not paid in three Months, being demanded in Writing, the Lord may enter on the Copyhold, and receive the Rents, &c. 'till his Fine is paid with all Charges: And no Infant or Feme Covert, shall forfeit any Copyhold Lands for their Neglect to come to Court to be admitted, &c. 4 Rep. 27. 23. 1 And. 192. Cro. Eliz. 148. Moor 597. 1 Leon. 100. Stat. 9 Geo. 1. cap. 29.

On Surrender of a Copyhold, the Surrenderor or Person making the same continues Tenant till the Admittance of the Surrenderee; and the Surrenderee may not enter upon the Lands, or Sur-

render before Admittance, for he hath no Estate till then; tho' 'tis otherwise of the Heir by Discent, who is in by Course of Law, and the Custom casts the Possession upon him: A Surrender is not of any Effect until Admittance, and yet the Surrenderee cannot be defrauded of the Benefit of the Surrender; for the Surrenderor cannot grant away the Land to any other, or make it subject to any other Incumbrances. 'Till Admittance, even after a Surrender presented and entred, the Estate doth not pass; but as soon as the Surrenderee is admitted, the Admittance having Relation to the Time of the Surrender, (which ought therefore to be ever carefully recorded on the Rolls) the Surrenderee shall be said to be in from that Time. *Comp. Cop. Sect. 39. Bridgm. 81. Poph. 127.*

A Grantee hath not any Interest vested in him of a Copyhold 'till he is admitted Tenant: And it has been holden, that if a Copyholder in Fee dieth seised, and the Lord admits a Stranger to the Land who enters; he is but Tenant at Will, and not a Disseisor to the Copyholder that hath the Lands by Discent, because he comes in by the Assent of the Lord, &c. But the Admittance of a Copyholder for Life, is also an Admittance of him in Remainder, to vest the Remainder in him; for they have but one Estate in Law, and therefore it is that the Admittance of the one shall serve and be sufficient for the other, as a Livery or Attornment: And no Fine is due for an Admittance to such a Remainder, unless there be a special Custom for it. Where there is Tenant for Life, and Remainder in Fee, he in Remainder may surrender his Estate, if there is no Custom to the contrary; and the Remainder-man, after the Death of Tenant for Life, may surrender without Admittance. 3 *Leon. 210, 329. Cro. Eliz. 504. 3 Lev. 308.*

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Every Admittance, as well upon a Discent as Surrender, may generally be pleaded as a Grant; to avoid the Inconvenience which would follow, if the Copyholder should be forced in Pleading to shew the first Grant, for that was either before the Time of Memory, and so not pleadable, or within the Time of Memory, and then the Custom fails: And a Person may alledge the Admittance of his Ancestor as a Grant, and shew the Discent to him, and that he entred without shewing any Admittance of himself. But he cannot plead that his Father was seised in Fee at the Will of the Lord, by Copy of Court-Roll, of such a Manor, according to the Custom of the Manor, and that he died seised, and the Land descended to him; for none may intitle himself to any Copyhold, but he ought to shew a Grant thereof: And therefore the shewing that one was seised in Fee, without shewing the Grant, is not good. 4 Rep. 22. Cro. Car. 190. Cro. Jac. 103.

Where a Widow's Estate is created by Custom, as her Estate arises out of the Husband's, his Admittance is the Admittance of her: And she who hath a Widow's Estate by the Custom of the Manor, upon the Death of her Husband, need not pay a Fine to the Lord for the Estate, it being only a Branch of the Husband's. And when a Custom is, that the Wife of every Copyholder for Life shall have her *Free Bench*, after the Death of the Husband, the Law casts the Estate on the Wife, so that she shall have it before any Admittance; and may make a Lease for a Year, as another Copyholder may. But if a Wife is intitled to her Free-Bench by Custom, and a Copyholder in Fee surrenders to the Use of another, and then dies; it has been adjudg'd, that the Surrenderee

who was admitted at the next Court should have the Land, and not the Wife; because the Wife's Title doth not commence 'till after the Death of her Husband, but the Surrenderee's Title begins by the Surrender, and the Admittance relates to that. *Hutt.* 18. *Hob.* 181, 244. 1 *Salk.* 185.

In this last Case, reported by others, it is said that after the Surrenderor's Death, both the Surrenderee and the Widow were admitted; and the Question in a Special Verdict in Ejectment, was which of their Estates should take Place? It was determin'd without Difficulty, for the Surrenderee against the Widow; for tho' by the bare Surrender, no Estate passeth out of the Surrenderor, and by Consequence he died seised in Fee of the Copyhold; yet it was not of an absolute, but a defeasible Estate of Inheritance, subject to be destroyed by the subsequent Admittance of the Surrenderee: And such Admittance of the Surrenderee shall relate to the Time when the Surrender was made, as well to defeat all mean Acts made by the Surrenderor, as all other customary Estates derived out of his Estate; and 'tis plain, that the Widow's Title by the Custom hath not Commencement by the Marriage, (as in Case of Dower at Common Law) for if it had, then the Husband could not defeat it by any Act, which he may in the Case of Free-Bench, for there the Husband must die seised, otherwise the Widow hath no Title. *Cartew* 275. 3 *Lev.* 385.

There was also a Case mentioned, where the Custom of a Manor was, that the Wife of a Copyholder dying seised should have her Widow's Estate; it happened that a Statute of Bankrupt was taken out against the Copyholder, and the Commissioners sold the Estate by a Deed of Bargain and

and Sale inrolled, two Years after which the Copyholder died, and his Widow was admitted before the Bargainee, who thereupon brought an Ejectment; and it was adjudged, that by the Conveyance the Estate was vested in the Bargainee before Admittance; which proves that a Copyholder may extinguish his Right, so as to bind the Estate of the Widow: It was likewise held, that after the Bargainee was admitted, it had Relation to the Sale, and should devert the Widow of that Right which she might have by the Custom. *Cro. Car.* 568. 4 *Mod.* 252, 253.

A late Act of Parliament ordain'd, that every Assignee of a Copyhold or customary Estate of any Prisoner discharged for Debt, should before he should take the Profits thereof, compound with the Lord of the Manor of whom holden, for such Fine on a Surrender, as is usual; and thereupon the Lord at the next Court shall grant to the Assignee the Copyhold or customary Estate, by Copy of Court-Roll, during the Estate or Interest assigned; reserving the Rent, to which the Estate was liable at the Time of the Assignment, and shall admit him Tenant according to the Custom of the Manor: But not to Prejudice the Estate of any other Person, which may be expectant on, or subsequent to the Estate of the Prisoner. *Stat. 10 Geo. 2. cap. 26.*

If a Copyholder surrender to the Use of another Person, and after the Lord having Knowledge of it, accepts Rent of such other, out of Court before any actual Admittance, the Rent being due to the Lord only from a Tenant, this is an Admittance in Law, and the Estate is immediately in the Tenant. And where a Surrender was to the Use of another; afterwards at another Court, the Surrendree made a further Surrender to the Use of *C. D.* Adjudg'd,
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this shall enure as an Admittance upon the first Surrender; for by the Acceptance of the Surrender, he is admitted to be Tenant. Any Act implying the Consent of the Lord to the Surrender, shall be judged in Law a good Admittance: If the Steward accept a Fine of a Copyholder, it amounts to an Admittance; but delivering a Copy is no Admittance. *Bridgm.* 49, 52. 3 *Bulst.* 214, 219. 1 *Nelf. Abr.* 493. 2 *Danv.* 189.

The Lord may refuse to admit any one in Court by Attorney, because the Tenant ought to do Fealty, which he cannot do by Attorney, but in Person; therefore Admittances are seldom or never made by Attorney: But if the Lord will admit a Tenant by Attorney, it is good: And Surrenders are oftentimes by Attorney. A Copyholder in Fee may surrender in Court, by Letter of Attorney: But not out of Court, without a special Custom. If one cannot come to the Court to surrender in Person, the Lord may appoint a special Steward to go to him, and take the Surrender: And where a Copyholder was in *Ireland*, the Steward of a Manor here made a Commission to one to receive a Surrender from him there, and it was held good. 2 *Danv. Abr.* 181, 189. 9 *Rep.* 75. 1 *Leon.* 36.

All Aliens of Copyholds must be by Surrender, into the Hands of the Lord; for should it be otherwise, the Lord would lose his Fine: And the Intent of these Surrenders is, that the Lord may not be a Stranger to his Tenant, and the Alteration of the Estate. If a Copyholder will exchange his Copyhold with another, he cannot do it by any ordinary Exchange, but the Parties must surrender to each other's Use, and be admitted by the Lord accordingly: If any Copyhold Tenant will devise his Copyhold Estate, he may not do it by Will at the Common Law; but he must sur-
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render to the Use of his last Will and Testament, and in his Will declare his Intention touching the Disposition thereof. And in case a Copyholder would mortgage his Copyhold, it is to be done by Surrender on Condition, &c. *Compl. Cop. Sect.* 36, 39. 1 *Bulst.* 200.

In divers Manors there is a Custom, that a Copyholder, out of Court, may surrender his Tenements to the Bailiff, or two honest Men of the same Manor, to the Use of another, who shall have the Land in Fee, Tail, or for Life, and this shall be presented at the next Court; and then he that is to have the Land, shall by Copy of Court-Roll have the same according to the Surrender. By the general Custom of Copyhold Estates, Copyholders may surrender in Court, and need not alledge any Custom to warrant it; and if out of Court, they surrender to the Lord himself, there needs not any Custom therefore: But where they surrender out of Court into the Hands of the Lord, by the Hands of two or three Copyholders, or the Bailiff, &c. As these Customs are particular, they must be pleaded; and if a Surrender be out of Court, there must be a Presentment of it, for it is not an effectual Surrender; nor is any Thing devested out of him that Surrenders, till presented in Court. *Litt. Sect.* 79. 1 *Inst.* 61, 62. 1 *Roll. Abr.* 500.

Surrenders out of Court, which may be taken by the Steward, in the Presence of two customary Tenants, are to be presented at the next Court held after taken, according to the Custom, or they will be void; and this must be done by the same Persons as took the Surrender, in all Points material according to it, otherwise the Surrender, Presentment and Admittance thereon may all become void: Tho' if the Steward leaves out any Part of the Surrender in the Entry on the Roll, the Roll may be amended.

amended. Where a Copyholder in Fee surrenders his Estate out of Court, and dies before it is presented, yet the Surrender being presented at the next Court will stand good, and he to whose Use it was made shall be admitted: And if *Cestui que Use* dies before Presentment, upon Presentment after his Death, his Heir shall be admitted; also if the Tenants by whose Hands the Surrender was made shall die, on Proof and Presentment of this in Court, it is well enough, and the Lord shall admit accordingly. Tenants refusing to present, may be obliged upon Petition, or Bill to the Lord, or in Chancery. 1 *Inst.* 62. 4 *Rep.* 29. 2 *Danv.* 188.

A Copyholder surrenders to the Use of one upon Trust, that he shall hold the Land until a certain Sum of Money is levied, and afterwards he shall surrender to the Use of another Person: If the Surrendree, after he hath levied the Money, refuses to surrender to the other Person, according to the Trust; a Bill may be exhibited to the Lord of the Manor to compel him to surrender, and the Lord upon hearing the Cause hath Power to decree the same, and then upon Refusal, may seise and admit the second Person to the Copyhold, for in such Cases he is Chancellor in his own Court. *Hill.* 25 *Eliz.* B. R. 1 *Leon.* 2.

It is held, that a Copyholder may surrender to the Use of another, reserving Rent with a Condition of Re-entry for Non-payment, and in Default of Payment may re-enter: But a Copyholder cannot surrender an Estate absolutely to another, and leave a particular Estate in himself. An Infant surrendred his Copyhold, and afterwards entred at his full Age, and it was held lawful, tho' the Surrendree was admitted; for Infants may not legally Surrender: And Feme Coverts are to be secretly examined by the Steward, on their surrendering their Estates.

Estates. A Surrender may not be to commence *in futuro*; as after the Death of the Surrenderor, &c. tho' Copyholds may be surrendered to the Use of a Man's Will. 4 Rep. 21. Moor 597. 1 Inst. 59. March 177.

Where a Copyholder of Inheritance surrendered his Estate to the Use of his two Sons, and the Survivor of them; and if the eldest Son died without Issue, then the Lands should remain to the youngest, &c. in which Surrender there was a *Memorandum*; this Surrender not to stand and be in Force till after my Death: It was adjudged, that this was a void Clause in Law, for a Surrender ought to take Place immediately; but it doth not make the Surrender itself void, because that was good and perfect in the Beginning, therefore this Clause which is void shall be rejected, as repugnant thereto. Cro. Car. 367. W. Jones 342.

A Surrender was made of Copyhold Lands to the Use of the second Son of B. D. for Life, after the Death of the Tenant in Possession, and his Heirs; adjudg'd that the Tenant had not a Fee-simple by Implication, in the Copyhold Lands, by these Words, for tho' it might be so in a Will, 'tis otherwise in a Surrender. And in a later Case, where a Copyhold in Fee was surrendered to divers Uses; the Court of B. R. resolved, that a Limitation of Uses in a Copyhold Surrender must be construed by the same Rules, and in the same Manner as if it were a Limitation in any Deed or Conveyance at Common Law; and that the Intent of the Party is not sufficient as in a Will, for the Statute 21 H. 8. leaves the Testator at Liberty to express his Intent as he pleases: But by the Opinion of two Justices, on Copyhold Lands being likewise surrendered to Uses, in the Case of an Use, it ought to be construed according to Wills; and to support the

318 Of Copyhold Estates,

the Intention of the Parties, Limitations of Copyhold Estates have been permitted, which are not allow'd in Freeholds. 1 *Brownl.* 127. 2 *Salk.* 621. 1 *Salk.* 391.

By the Custom of some Manors, if any customary Lands are granted by Copy of Court-Roll to two or three Persons, for their Lives, and the Life of the longest Liver of them successively, the Person first named in such Copy may surrender all the Lands, and thereby destroy the Title of the other Persons therein named: But this is a Custom against common Right, to defeat a third Person's Estate, without any Recompence, and therefore it ought to be strictly taken. And where 'tis held, that when Tenant for Life of a Copyhold surrenders, &c. that no Use is left in him, but whosoever is after admitted, comes in under the Lord; that is to be understood of such Manors where the Custom warrants only customary Estates for Life; and is not applicable to Copyholds granted for Life, with a Remainder in Fee. If by the Custom where a Copyhold is granted to three in Succession, the first Taker may surrender or dispose of the Whole, and he also pays the Purchase Money; there it shall go to his Executor, and not to the other two. *Raym.* 402. 1 *Mod.* 200. 1 *Chan. Cas.* 310. See 2 *Vern.* 264.

A Copyholder pleaded a special Custom, that every Copyholder for Life might in the Presence of two other Copyholders appoint who should have his Copyhold after his Death, without any Surrender to his Use; and that the two Copyholders might assess a Fine, so as not to be less than had been usually paid; and this was adjudged a good Custom. A Man seised of Copyhold Lands in Fee, devised Part of the Land to his Wife for Life, the Remainder to his Brother and his Heirs; and after-

wards in the Presence of three customary Tenants of the Manor declared he had made his Will, and appointed all Things therein as he would have it; and then he said, *And I here surrender all my Copyhold Lands into your Hands accordingly*: Here the whole Court was of Opinion, that this Surrender is restrained by the Will, so that no more passeth to the Wife than the Part, which is mentioned therein; and the general Words of the Surrender, shall not enlarge it. 3 *Leon.* 18. 4 *Leon.* 237, 238.

If a Copyholder being a Jointenant, surrenders out of Court his Part into the Lord's Hands, according to the Custom, to the Use of his Will, and dies, and at the next Court this is presented, his Devisee shall have the Estate; for by the Surrender the Jointure was sever'd, and the Estate pass'd to the Lord on a Condition subsequent, that the Surrender were presented at the next Court. And where a Copyholder surrenders to the Use of his Will, and afterwards devises the Land to J. S. and dies, in such Case the Lands do not pass by the Will, but by the Surrender; the Will being only a Declaration of the Uses of the Surrender: But where the Husband devised his Copyhold Lands to his Wife during her Life, and that she should sell the Reversion for Payment of his Debts; and sometime after the making his Will, he surrendered the said Copyhold in Court to the Use of his Wife, and died; adjudged that the Widow might make a good Title to the Purchaser of the Reversion, for upon Payment of the Purchase Money, he shall be in under the Will. 1 *Inst.* 59. 1 *Bulst.* 200. *Cro. Eliz.* 68.

Where a Grant was made by a Lady of a Manor of Part of it, being ancient Copyhold, to one and his Heirs; and afterwards she granted the Inheritance of the same Copyhold to a Stranger in Fee:
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320 Of Copyhold Estates,

In this Case it was resolv'd, that Custom has so establish'd the Estate of a Copyholder, that Severance of the Inheritance of the Copyhold from the Manor shall not destroy the Copyhold Estate: Yet whereas here was a Devise, and Surrender to the Use of the Will, after the Severance of the Inheritance from the said Manor, that was void, because the Lands were not Parcel of the Manor at the Time of the Surrender; and the Will alone, without a Surrender, cannot pass a Copyhold Estate, and therefore the Land shall go to the Heir by Discent. 4 Rep. 24.

Tho' Equity will supply the want of a Surrender of a Copyhold, in some extraordinary Cases. If Provision is made by Will for younger Children, and there is a Defect in the Surrender; as if it be made into the Hands of one customary Tenant, when by the Custom it ought to be made by the Hands of two such Tenants, &c. this Defect may be supplied in Equity against the eldest Son and Heir; and there are several Precedents of Surrenders supplied, in Favour of Children, Creditors and Purchasers. But tho' the Court of Chancery will supply the want of a Surrender for Payment of Debts; yet not for the Wife against an Heir at Law, who would be disinherited thereby, or for younger Children against an Elder, to make them in a better Condition than the Elder. 1 Vern. 132. Mich. 1729. Abr. Ca. Eq. 123, 124.

It has been decreed, that all Devises by Copyholders, for the Use of Children or Creditors; and all Charges made by them upon their Lands, for the Benefit of Children or Creditors, will be good in a Court of Equity, tho' there was no Surrender to these Uses. One having by Will devised a Copyhold Estate to his Grandson; Somers Lord Chancellor decreed the Will good, and that Equity

ought to supply a Surrender as well in such Case, as in Case of a Son; for that a Grandson was in the Eye of the Law a Son, and the Grandfather was bound to provide for him: But the House of Lords reversed this Decree; and held, that Equity ought not to supply such a Defect in Disfavour of the Heir at Law, unless it were in Favour of a Son or Daughter; and not then neither, if it was to disinherit the eldest Son. 3 *Salk.* 84. 1 *Salk.* 187.

If a Man devises a Copyhold Estate to a Charity, it shall be a good Appointment within the Statute of Charitable Uses, tho' there shall be no Surrender to the Use of his Will. A *Cestui que Trust* of a Copyhold, having an equitable Interest only, may devise it without any Surrender: In the Case of Tenant in Tail of the Trust of a Copyhold Estate, with Remainders over, he offered to surrender in the Lord's Court, but was refused, not having the legal Estate; and thereupon he made his Will, and devised his Estate to his Wife and Children; the Court conceived the Will here sufficient to bar the Intail of a Trust, and decreed the Estate to go according to the Will. *Nels. Chan. Rep.* 75. 2 *Vern.* 680, 585.

A Copyholder of Inheritance borrowed Money, and for securing the Repayment thereof, surrendered his Copyhold by way of Mortgage, to the Use of the Mortgagee and his Heirs; this Surrender was not presented in Court, as it ought, for which Reason it was void; and the Copyholder became a Bankrupt, and died before any Presentment, and his Estate was assign'd to the Creditors: The Lord Chancellor, tho' he at first doubted, decreed that the Surrender should be supplied against the Assignees; for upon a defective Surrender, the Estate is bound in Equity; and in this Case the Assignee

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shall be a Trustee for the Mortgagee. Where a Copyholder had borrow'd a Sum of Money, and agreed to surrender his Copyhold to secure the Repayment; but dying before he made any Surrender, it was adjudged that his Son, an Infant, should surrender when he came to Age. 2 Salk. 449. See 1 Chan. Caf. 272.

In case of a Copyholder in Fee, who surrendered out of Court into the Hands of two Tenants of the Manor, all his Copyhold Estate to the Use of the Surrendree and his Heirs; on Condition to be void on the Payment of a certain Sum of Money to the Surrendree at a certain Day; before that Day came, the Surrenderor made another Surrender of Part of the same Lands to the Use of C. D. and his Heirs; afterwards he paid the Money, and then made a third Surrender of the Lands to the Use of L. D. and his Heirs. These two last Surrenders were first presented, and C. D. was admitted into that Part of the Estate which was surrendered to him; and L. D. admitted to the Rest, and the first Surrender was never presented at all: It was insisted in an Ejectment, that the second Surrender made to C. D. of Part of the Lands was not good, because by the first Surrender all the Estate was out of the Surrenderor, until he had performed the Condition, which not being done when he made the second Surrender, it must therefore be void; for he had no Manner of Interest then to Surrender, tho' he performed the Condition afterwards: But adjudged that the Surrender into the Hands of the two customary Tenants was no more than the Beginning of the Estate of the Surrendree, which not being perfected by Presentment and Admittance, the Right of the Copyhold Estate still remained in the Surrenderor, which he might transfer

fer by a second Surrender. *Cro. Car.* 273, 283.
3 *Cro.* 422.

A conditional Surrender was made by Copyholder in Fee for securing a Sum of Money at the End of six Months; the Money not being paid, and the Mortgagee willing to continue his Money, they desired the Lord that the old Surrender might be taken up, and a new one made for six Months longer: But the Lord required his Fine, and that the Mortgagee should come in and be admitted; and the Court of Chancery being of Opinion, that Equity could not relieve against the Fine, the Matter was ended by Compromise, and a Fine of 40 *l.* paid to the Lord, the Estate being 100 *l.* a Year. 2 *Vern.* 367.

Upon the Mortgage of Copyhold Lands, the Mortgagor surrenders into the Hands of two customary Tenants, to the Use of the Mortgagee, upon Condition to be void, if the Money be paid on such a Day, and to avoid the Lord's Fine this Surrender was not presented at the next Court; but after the Court was over, a new Surrender was made into the Hands of two Tenants, with Design so to do from Time to Time, as often as any Court should be holden, which has been generally practised in many Manors; the Lord hereupon insisted, that this Non presentment was at Law a Forfeiture, and Relief was denied against it in Equity. *Skin.* 142.

If the Lord insists upon an extravagant *Fine*, for a Renewal of an Estate, he shall be restrained to what is reasonable, altho' the Fine is arbitrary and uncertain; but having demanded eight or ten Years Value of the Land, the Court decreed him only two Years Value. In Case the Fine demanded is unreasonable, the Copyholder is not obliged to pay it; and tho' he himself only thinks it unreasonable,

and afterwards it is adjudg'd reasonable; yet 'tis no Forfeiture of the Estate, being a Matter of Controversy. Fines are due to the Lord on Admittances, and upon Surrenders on every Change of the Estate, according to Custom; and a Fine certain, is to be paid presently; but if it be uncertain, the Copyholder is to have Notice, and Time to pay it. A *Heriot* is also a Duty to the Lord, rendred at the Death of the Tenant, or on a Surrender and Alienation of an Estate; and is the best Beast or Goods of the Tenant deceased, or otherwise according to the Custom of the Manor: For Fines, or Heriots, the Lord may distrain by Custom, or have Action of Debt. *Services* to the Lord in general signify any Duty; and are not only annual and accidental, but corporal, as Homage, and Fealty, &c. 2 *Chan. Rep.* 134. 1 *Roll. Abr.* 505. 13 *Rep.* 2. *Plowd.* 96. 4 *Rep.* 27. 9.

As to *Forfeitures* of Copyhold Estates; if the Lord demands his Rent, and the Copyholder being present denies to pay the same at the Time required; or if the Lord on Admittance of a Copyholder, the Fine by the Custom of the Manor being certain, demandeth his Fine, and the Tenant denieth to pay it upon Demand; a Copyholder refusing to do Suit of Court, on Warning given; and not performing the *Services* due to his Lord; or if he sue a *Replevin* against the Lord, upon the Lord's lawful Distress for his Rents or *Services*; or if he commits any voluntary or permissive Waste on his Copyhold, or cuts down Timber-trees, unless it be for Reparations, &c. all these are Forfeitures: Tho' if an Under-Lessee for Years of a Copyholder, cut down Timber, this shall not be a Forfeiture of the Copyhold Estate, but the Lord is put to his Action of the Case against the Lessee. Also if the Lord cuts down all the Copyholder's Trees,

Trees, and do not leave him Firewood, &c. the Tenant may have Case against him. 3 *Lev.* 128. 1 *Bulst.* 150. *Style* 233. 1 *Brownl.* 231.

Where a Copyholder for Life sells Timber-trees, the Lord may take them, and the Estate is forfeited: And if a Copyhold is granted to two for their Lives successively, where the Custom is, that they shall not sell Trees; if the first Copyholder for Life cut down Trees, &c. 'tis not only a Forfeiture of his own Estate during Life, but of him in Remainder for Life: But in other Cases, such Copyholder committing Waste, shall not forfeit the Estate of him in Remainder; and when a Surrender is made with Remainders over in Fee, Case lies for him in Remainder against a Copyholder for Life, who commits Waste, &c. A Copyholder for Life had committed a Forfeiture, by cutting of Timber-trees, and the Lord entred, and admitted the Remainder-Man; then the Copyholder brought his Bill in Chancery, offering that if on a Trial it should appear to be Waste, and that he cut the Trees with such Intent, to make Satisfaction; it was here decreed that he should be relieved, and that the Remainder-Man should deliver Possession and Account for the mesne Profits. And one of our Lord Keepers declared, that the Rules of Equity were not so strict, but that Relief might even be given against voluntary Waste and Forfeiture; upon putting the Estate into good Repair, and paying all Costs, &c. *Moor* 49. *Cro. Eliz.* 880. 1 *Chan. Ca.* 95. 2 *Vern.* 664.

The general Custom of Copyholds allows a Copyholder to make a Lease for one Year of his Copyhold Estate, and no more, without incurring a Forfeiture; and he cannot make any Lease for another Year in Reversion, or which may continue for more than a Year immediately, and not to com-

mence at a Day to come, except he have a Licence from the Lord to let for Years; if he doth, he will forfeit his Estate: It has been adjudg'd, that if a Copyholder make a Lease for a Year warranted by the Custom, and so from Year to Year during ten Years, 'tis a Lease for ten Years, and a Forfeiture of his Copyhold: But a Copyholder may make a Lease for a Year, and covenant with the Lessee, that after the End of that Year, he shall have and enjoy the Lands for another Year, and so *de Anno in Annum* during the Space of seven Years, &c. and be no Forfeiture; for there is no lawful Lease but for a Year only. *Cro. Jac.* 301. *1 Roll. Abr.* 848. *2 Mod.* 81.

All Forfeitures of Copyhold Estates are to the Lord of the Manor, for the Land is held of him; and they are mostly caused by Acts contrary to the Tenure: Tho' a succeeding Lord of a Manor, shall not have any Advantage of a Forfeiture by Waste done by a Copyholder in the Time of his Predecessor; it is a personal Wrong, which dies with the Person, and must be took Advantage of by him that was wronged. And if a present Lord doth any Thing whereby he acknowledges the Person to be his Tenant after Forfeiture, this Acknowledgment amounts to a Confirmation of his Estate. *2 Sid.* 8. *Coke's Cop.* 61. *1 Salk.* 187.

On Forfeiture of a Copyhold generally, 'tis said the Lord may grant it before Seisure; because it is a Determination of the Will, and is immediately in the Lord as in his Reversion: But the Forfeitures proceeding from Felonies, Alienation by Deed, &c. must be presented in Court. And where Lands are *escheated*, or fallen to the Lord, for want of an Heir to inherit them, &c. before the Lord can enter upon the Estate, the Homage Jury ought to present it; and Proclamation should be made to
give

give publick Notice, that if any Man come in and make a just Claim, he shall be receiv'd; and the Homage finding it clear, intitle the Lord to the Lands escheated. 2 *Inst.* 36.

It is said all Escheats, Forfeitures, and the like, are tantamount to Surrenders in Law, &c. And if a Lord to whom a Copyhold comes by Escheat, or otherwise, leases it for one Year, Half a Year, or any certain Time, the Copyhold is *extinguish'd*; but had the Lease been only at Will, it would have been no Extinguishment, for notwithstanding it was in the Lord's Power to demise it by Copy: And in Case such a Lease be made by Tenant for Life, then is the Copyholder during his Life only in Suspence, and his Estate revives on the Descent to the next Heir. If a Copyholder accept a Lease for Years of the Lord, of the same Lands he holds by Copy, the Copyhold is extinguished; but by Lease of the Manor, the Copyhold is only suspended during the Lease. Generally a Copyhold is extinct, whenever it becomes not demisable by Copy: And where a Copyhold is enfranchised or extinguished, the customary Rights of Common, &c. are lost and gone. 2 *Sid.* 35. 4 *Rep.* 31. *Cro. Eliz.* 7. *Coke's Cop.* 62. 1 *Salk.* 366.

Copyholders may intail Copyhold Lands, and bar the *Intails* and Remainders, by committing a Forfeiture; as making a Lease without License, &c. and then the Lord is to make three Proclamations, and seise the Copyhold, after which the Lands are granted to the Copyholder, and his Heirs, &c. this is the Manner in some Places; but it must be warranted by the Custom. And a Copyhold shall be barred by a Recovery, by special Custom; also a Surrender may cut off the Tail, and bar the Issue by Custom: A Plaint may be made in the Court of the Manor, in the Nature of a real Ac-

tion, and Recovery shall be had therein against Tenant in Tail, which shall be a Discontinuance to the Estate-tail. But a Fine and Recovery at Common Law, will not destroy a Copyhold Estate; because Common Law Assurances do not work upon the Assurance of the Copyhold. Tho' Copyhold Lands, by Fine with Proclamations, according to Statute, and five Years Non-claim, will be barred. 2 *Danv. Abr.* 191. 1 *Sid.* 314. 1 *Inst.* 60. 1 *Roll. Abr.* 506. 1 *Brownl.* 121. *Stat.* 4 *H.* 7.

When any *Statute* or Act of Parliament alters the Service, Customs, Tenure and Interest of Lands, which may be prejudicial to the Lord or Tenant, there the general Words of such an Act shall not extend to Copyholds; and the Reason why Copyhold Lands have been adjudged not to be within Statutes, which contain general Words, is because of the Respect to the Lord's Prejudice. Copyholders are not within the Statute 27 *H.* 8. of Jointures on Women; nor the 32 *H.* 8. c. 18. of Leases, Copyholds being in their Nature demiseable only by Copy; they are not within the Statute of Uses; nor are Copyholds extendible in Execution: But Copyhold Estates are within the Statute 18 *Ed.* 1. of Limitation of Actions; a Surrendree of a Copyhold Reversion, is within the Equity of the 32 *H.* 8. c. 3. to bring Action of Debt or Covenant against a Lessee, &c. and Copyholds are within the 13 *Eliz.* &c. against Bankrupts. The Lord shall have the Custody of the Lands of Ideots, &c. and the Guardianship of Heirs, if there be a Custom for it. 3 *Rep.* 7. 3 *Lev.* 395. 1 *Nels. Abr.* 492, 522. 1 *Salk.* 185. *Carthew* 205.

Copyhold Inheritances have no collateral Qualities, which do not concern the Discent, as other Inheritances at the Common Law have; and therefore such customary Inheritance shall not be Assets,
to

to charge the Heir in an Action of Debt, on a Bond made by his Ancestor, altho' he binds himself and his Heirs; neither shall the Wife of a Copyholder in Fee be endowed; nor the Husband of a Woman Inheretrix of such Estate be Tenant by the Curtesy; nor shall a Discent of a Copyhold Estate toll the Entry of him who has a customary Right to it, &c. But by special Custom, there may be Dower, and Tenancy by the Curtesy, &c. 4 Rep. 22. Poph. 188. 2 Bulst. 337. Cro. Eliz. 361.

The Copyholders hold their Estates free from Charges of Dower to the Lord's Lady, tho' the Grants and Admissions were subsequent to her Title of Dower; because they are created by Custom, which is paramount to the Title of Dower. 4 Rep. 24. The Difference between Copyholds, and customary Freeholds, which pass by Surrender; and that an Estate cannot be a Copyhold Estate, tho' it be held by Copy according to the Custom of the Manor, unless it be also at the Will of the Lord, see 1 Salk. 365.

The Form of a Grant of a Copyhold Estate for Lives, and Admittance thereon.

Manor } At a Court-Baron of S. D. Esq; Lord of
of A. } the Manor aforesaid, held for the said
Manor the Day, &c. of October
in the twelfth Year of the Reign of
the Lord George the Second, by the
Grace of God, King of Great Britain,
France and Ireland, Defender of the
Faith, &c. and in the Year of our
Lord 1740. Before J. W. Gentleman,
Steward there; It was inrolled among
other Things as follows:

AT this Court came B. D. and took of the Lord of the Manor aforesaid, by the Delivery of the Steward aforesaid, one Messuage or Tenement, and fifteen Acres of Land, Meadow and Pasture, with their Appurtenances lying and being within the said Manor, late in the Tenure of T. F. deceased: To have and to hold the said Tenement, and fifteen Acres of Land, with all and singular the Appurtenances unto the aforesaid B. D. and also to J. and T. his Sons, for the Term of their Lives, and the Life of either of them longest living successively, at the Will of the Lord, according to the Custom of the Manor aforesaid; By the Rent of three Shillings and four Pence by the Year, and for a Heriot when it happens 20 s. And by all other Rents, Works, Suits, Customs and Services therefore due, and of Right accustomed; and for such Estate and Entry so in the Premises had, the said B. D. gives to the Lord for a Fine sixty Pounds before-hand paid, and so

Lords and Tenants. 331

so he is admitted Tenant thereof, and doth his Fealty, but the Fealties of the others are respired until, &c. Dated by Copy of the Rolls of the aforesaid Court, the Day and Year aforesaid.

Examined with the Rolls
of the said Court,

By me J. W. Steward there.

A Surrender and new Grant for Lives.

AT this Court came M. E. who claims to hold for the Term of his Life, and the Life of R. his Son, by Copy of Court-Roll of the Manor there, bearing Date, &c. one Tenement called, &c. with the Appurtenances, within the Manor aforesaid; and all and singular the Premises, and the whole Estate thereof, Right, Title, Interest, Possession, Reversion, Claim and Demand of him the said M. E. and R. his Son, (the said M. being sole Purchaser of the Premises) together with the Copy thereof made now to be cancelled, into the Hands of the Lord in the aforesaid Court he hath surrendred, that the said Lord may do therewith according to his Will, from whence there accrues to the Lord a Heriot, which is included in the Fine here under-written; whereupon afterwards to this same Court came the said M. E. and R. his Son, and took of the Lord in the said Court by the Delivery of the Steward, the aforesaid Premises with the Appurtenances: *To have and to hold* the Tenement and Premises aforesaid, with all and singular the Appurtenances, to the said M. E. and R. E. and also to A. E. Daughter of the said M. E. for the Term of their Lives, and of the Life of the longest Liver of them successively, at the

332 **Of Copyhold Estates,**

the Will of the Lord, according to the Custom of the Manor aforesaid; By the Rent therefore by the Year of 16 s. 8 d. and one Heriot when it shall happen, and by all other Rents, Burdens, Works, Suits, Customs and Services formerly due and of Right accustomed; and the said *M.* and *R.* to have such Estate in, and Entry on the Premises, give to the Lord for a Fine 120 l. beforehand paid, and so the said *M.* is admitted Tenant thereof, and doth his Fealty to the Lord, but the Fealties of the said *R.* and *A.* are respited until, &c.

A Grant of a Reversion of a Copyhold.

AT this Court came *T. B.* and took of the Lord by the Delivery of the Steward there, according to the Custom of the said Manor, the Reversion of one Messuage or Tenement, &c. within the Manor aforesaid, with the Appurtenances, now in the Tenure of *E. R.* To have and to hold the said Reversion and also the Messuage and Premises aforesaid to the said *T. B.* and *N. B.* his Son for the Term of their Lives, and the Life of the longest Liver of them, according to the Custom of the Manor aforesaid, from and immediately after the Death, Surrender or Forfeiture of the aforesaid *E. R.* or otherwise the said Premises shall come and happen to fall into the Hands of the Lord; By the Rent therefore by the Year of iv s. iii d. when it shall happen, and by all other Rents, Burdens, Works, Customs and Services therefore due and of Right accustomed; and for such Estate so in the Premises had, the said *T. B.* gives to the Lord for a Fine xxvi l. beforehand paid, and so he is admitted Tenant thereof as in
Rever-

Reversion, and his Fealty is respited until the said Reversion do happen.

A Surrender of the Reversion of a Copyhold for Lives, and Re-grant, with an Exception.

TO this Court came D. J. and surrendered into the Hands of the Lord by the Hands of the Steward aforesaid, according to the Custom of the Manor aforesaid, the Reversion of one Tenement, and Close of Land, called, &c. containing by Estimation, &c. more or less, within the Manor aforesaid, and all the Estate, Right, Title, Interest, Claim and Demand of the said D. of and in the Premises aforesaid, with the Appurtenances, by Virtue of a Copy of Court-Roll bearing Date, &c. together with the said Copy to be cancelled and made void; and thereupon afterwards to this same Court came again the said D. J. and took of the Lord aforesaid, by the Delivery of the Steward aforesaid, according to the Custom of the Manor, the Reversion aforesaid, of all and singular the Premises aforesaid, with the Appurtenances, (except and always reserved to the Lord of the Manor aforesaid, his Heirs and Assigns, all Coals and Mines of Coal in and upon the said Premises, or any Part thereof, with Power and Liberty for the Lords of the said Manor for the Time being and at all Times, their Heirs and Assigns, by all Ways and Means, to dig for, take and carry away the same): To have and to hold all and singular the Premises aforesaid, with the Appurtenances, (except before excepted) to the said D. J. and E. his Wife for the Term of their Lives, and the Life of either of them longest living successively, at the Will of the Lord,

Lord, according to the Custom of the Manor aforesaid, immediately after the Death, Surrender, Forfeiture, or other Determination of the Estate which *W. J.* now hath in the Premises aforesaid for Term of his Life; rendring therefore yearly the Rent of, &c. and one Heriot when it shall happen, and all other Burdens, Works, Customs, Rents and Services, therefore first due and of Right accustomed; and for such Estate so had in the Premises the said *D. J.* gives to the Lord of the Manor aforesaid for a Fine, &c. And so the said *D. J.* and *E.* his Wife are admitted Tenants thereof in Reversion, but the Feaky of each of them respectively is respited until, &c.

A Surrender of Copyhold Lands by Attorney, and a new Grant upon it.

AT this Court came *B. R.* of, &c. in the Parish of *S.* in the County of *D.* Yeoman, by Virtue of a Letter or Warrant of Attorney in Writing bearing Date the Day, &c. of this Month of *October*, made by *T. R.* of, &c. within the Manor aforesaid, and now produced in Court, which said *T. R.* claims to hold for the Term of his Life and the Life of *L.* his Son by Copy of Court-Roll of the Manor there bearing Date, &c. one Close of Land called, &c. containing by Estimation two Acres, one Close of Meadow called, &c. and containing, &c. And also, &c. with all their Appurtenances; and all and singular the Premises, and the whole Estate thereof, Title, Interest, Possession, Reversion, Claim and Demand of him the said *T. R.* and *L.* his Son, (together with the said Copy to be cancelled) the said *T. R.* being sole Purchaser of the Premises, he the said *B. R.* for and in the Name
 1 of

of the said *T. R.* into the Hands of the Lord in the aforesaid Court hath surrendred, that the said Lord may do therewith his Will, from whence there happens to the Lord a Heriot, which is included in the Fine under-written; *whereupon* to this same Court came the said *T. R.* by the said *B. R.* his Attorney aforesaid, and a-new took of the Lord in the aforesaid Court, by the Delivery of the Steward aforesaid, all and singular the Closes, Lands and Premisses aforesaid, with all their Appurtenances: *To have and to hold* the Closes and Premisses aforesaid, with all and singular their Appurtenances, to him the said *T. R.* and also the said *L.* his Son, and *A.* Daughter of the said *L.* for the Term of their Lives, and the Life of either of them longest Living successively, at the Will of the Lord, according to the Custom of the Manor aforesaid; By the Rent therefore by the Year, &c. and one Heriot when it shall happen, and by all other Rents, Works, &c. formerly due and of Right accustomed; and to have such Estate and Entry in the Premisses, the said *T. R.* gives to the Lord for a Fine, &c. afore-hand paid, and so by the said *B. R.* his Attorney he is admitted Tenant thereof; but his Fealty and the Fealties of the others are respited until, &c.

A Surrender and new Grant of a Copyhold Estate for Lives, with a Licence to let the same.

TO *this Court* came *E. T.* who claim'd to hold for Term of his Life, and the Lives of *E.* and *S.* his Children, by Copy of Court-Roll of the Manor there, bearing Date, &c. one Messuage or Tenement, and one Close of Pasture or arable Land,

Land, containing by Estimation, &c. with the Appurtenances within the Manor aforesaid; and all and singular the Premises, and the whole Estate thereof, Right, Title, Interest, Possession, Reversion, Claim and Demand as well of him the said E. the Father, as of the said E. and S. his Children, and of either of them, together with the Copy thereof made to be cancelled, (he the said E. the Father being sole Purchaser of the Premises) into the Hands of the Lord in the aforesaid Court hath surrendered, to the Intent the Lord may do therewith his Will, upon which there accrue to the Lord a Heriot, which is included in the Fine here under-written; *whereupon* to this same Court came the said E. the Father, and E. his Son and took of the Lord in the aforesaid Court, all and singular the Premises aforesaid with the Appurtenances; *To have and to hold* all and singular the said Premises, with their Appurtenances, to the said E. T. the Father and E. his Son, and also to M. T. Daughter of the said E. T. the Son, for the Term of their Lives, and the Life of every and either of them longest Living successively, at the Will of the Lord, according to the Custom of the Manor aforesaid; By the Rent therefore by the Year of xii s. and one Heriot when it shall happen, and by all other Rents, Burdens, Works, Suits, Customs and Services formerly due and of Right accustomed; and for such Estate so had in the Premises, as aforesaid, the said E. the Father and E. the Son give to the Lord for a Fine xxxvi l. before-hand paid; and so the said E. the Father is admitted Tenant thereof, and doth his Fealty to the Lord, but the Fealties of the said E. the Son and M. are respited until, &c.

And further Licence is granted to the said *E. T.* the Father and *E.* his Son to let the aforesaid Messuage or Tenement and Close of Pasture above granted, with the Appurtenances, to *J. G.* of, &c. in the County of *W.* Yeoman, his Executors, Administrators or Assigns, (or to any Under-tenant or Under-tenants) for the Term of twenty-one Years now next coming or ensuing, if he the said *E. T.* the Father, *E.* the Son, and *M. T.* or either of them shall so long live; *provided* that the Houses, Hedges, Ditches, and other Inclosures, be from Time to Time kept well and sufficiently repaired and amended, and the Rents, Burdens, Works, Suits, Customs and Services therefore due to the Lord, be well and truly paid, rendered and performed: Otherwise this Licence shall be void.

An Admittance to a Copyhold in Fee.

TO this Court *A. B.* of, &c. came in his proper Person, and humbly desired of the Lord to be admitted Tenant to one customary Messuage or Tenement known by the Name of, &c. and two Closes or Parcels of customary Land, with the Appurtenances, containing by Estimation four Acres, more or less, to him lately forfeited, or fallen, &c. *Whereto* the Lord by the Steward aforesaid hath consented, and hath delivered him Seisin thereof by the Rod or Verge; *To have and to hold* the same to the said *A. B.* his Heirs and Assigns for ever, by the Rod, at the Will of the Lord, according to the Custom of the Manor aforesaid, by the Rent and Services therefore formerly due and of Right accustomed; and he gives to the Lord for a Fine, &c. and is admitted Tenant thereof.

A Surrender and Admission of a Copyholder in Fee.

AT this Court C. D. a customary Tenant of this Manor surrendered into the Hands of the Lord, by the Hands of the Steward aforesaid, all that customary Tenement, &c. called, &c. To the Use and Behoof of E. F. his Heirs and Assigns for ever; which said E. F. being present here in Court, humbly desired to be admitted to the Tenement aforesaid, with the Appurtenances, whereupon the Lord by his Steward aforesaid hath granted to him Seisin thereof by the Rod: *To have and to hold* the Tenement aforesaid to the said E. F. his Heirs and Assigns, at the Will of the Lord according to the Custom of the Manor aforesaid; and he giveth to the Lord for a Fine, &c. Is admitted Tenant thereof, and doth his Fealty, &c.

The Admittance of a next Heir on the Death of a Tenant, and Surrender by a Man and his Wife.

AT this Court it is presented by the Homage aforesaid, that A. B. late a customary Tenant of the Manor aforesaid, who held to him and his Heirs of the Lord of the said Manor, by Copy of Court-Roll, according to the Custom of the Manor, one Cottage or Tenement, &c. with the Appurtenances, by the Rent, &c. Suit of Court and Services therefore due and accustomed, since the last Court died so seised thereof, and that E. D. Wife of L. D. of, &c. is Sister and next Heir of the said A. B. by Discent; which said E. being present

present here in Court, desired to be admitted Tenant to the Premises aforesaid, with the Appurtenances; *whereto* the Lord by his Steward aforesaid hath consented, and hath granted her Seisin thereof by the Rod: *To have and to hold* all and singular the Premises aforesaid, with the Appurtenances, unto the said *E. D.* her Heirs and Assigns for ever, of the Lord by the Rod, at the Will of the Lord, according to the Custom of the Manor aforesaid; by the said yearly Rent of, &c. Fealty, Suit of Court, and other Services therefore formerly due, and of Right accustomed; and she gives to the Lord for a Fine for such Entry, &c. and doth Fealty, and is admitted Tenant thereof.

And afterwards at the same Court came the said *L. D.* and *E.* his Wife, (the said *E.* being first solely and secretly examined and consenting) and surrendered all the Premises aforesaid, with the Appurtenances, into the Hands of the Lord of the said Manor, by his Steward aforesaid; *To the Use* and Behoof of such Person and Persons, and to and for such Uses, Intents and Purposes, as she the said *E.* by any Deed or Writing whatsoever, either with or without Power of Revocation, by her executed in the Presence of two credible Witnesses, or by her Last Will and Testament (which he the said *L.* hath given and granted, and by this Surrender gives and grants to the said *E.* Power to make, and which he will at all Times hereafter consent to and confirm) by her in the Presence of three credible Witnesses executed, or to be executed, shall limit, direct, devise or appoint.

A Surrender of a Copyhold in Fee, out of Court, upon Condition in Nature of a Mortgage.

AT this Court the Homage present, that *A. B.* a customary Tenant of this Manor, since the last and before this Court, that is to say, the Day, &c. surrendered into the Hands of the Lord of the said Manor, by the Hands of *C. D.* and *E. F.* two other customary Tenants of the Manor aforesaid, all that customary Messuage or Tenement, with all and singular its Appurtenances, situate, lying and being, &c. within the Manor aforesaid, now in the Tenure of, &c. *To the Use and Bechoof of T. H.* of, &c. his Heirs and Assigns for ever. *Provided* always and under this Condition, that if the said *A. B.* his Heirs, Executors, Administrators or Assigns do and shall pay or cause to be paid to the said *T. H.* his Executors, Administrators or Assigns the full Sum of One hundred Pounds of lawful Money of *Great Britain*, in or upon the Day of, &c. next ensuing the Surrender aforesaid, at the House of him the said *T. H.* situate, &c. without Fraud or Delay, That then the Surrender aforesaid shall be void and of no Effect; otherwise to remain in full Force.

Another Surrender on Condition recited, and the Condition perform'd, and a fresh Surrender upon Condition.

WHereas at the Court held for this Manor the Day, &c. it was found by the Homage, that *T. A.* a customary Tenant of the said Manor,

Manor, out of Court, that is to say, on the Day of, &c. Surrendred into the Hands of the Lord, by the Hands of D. G. Bailiff, and in the Presence of H. T. and R. S. two customary Tenants of the Manor aforesaid, according to the Custom of the said Manor, All that customary Messuage or Tenement called, &c. or by whatsoever other Name the same is known, with all Orchards, Gardens, Houses, and Appurtenances, and also three Acres of customary Land to the said Messuage belonging, now in the Occupation of R. J. and the aforesaid T. A. together with one other customary Cottage with the Appurtenances, now in the Tenure of L. A. *To the Use and Behoof of S. K. of, &c. and his Heirs for ever*; under a Condition, that if the said T. A. should pay to the said S. K. the Sum of One hundred twenty-seven Pounds, and four Shillings, upon the Day, &c. which should be in the Year, &c. then the said Surrender to be void, otherwise to remain in full Force and Virtue: Now at this Court came J. A. of, &c. aforesaid, by the Consent and Appointment of the said S. K. and acknowledged that full Satisfaction was made according to the Form and Effect of the conditional Surrender aforesaid. *And afterwards* to this same Court came the aforesaid T. A. in his proper Person, and in open Court surrendered into the Hands of the Lord, by the Hands of his Steward aforesaid, all and singular the Premisses aforesaid, with their Appurtenances, *To the Use and Behoof of the said J. A. and W. A. of, &c. and their Heirs for ever*: Upon Condition nevertheless, that if the said T. A. his Heirs, Executors, Administrators or Assigns shall pay or cause to be paid to the said J. A. and W. A. their Executors, Administrators or Assigns, the full Sum of One hundred and five Pounds of good and lawful Money of Great Bri-

tain, in or upon the Day of, &c. which shall be in the Year of our Lord, &c. for the Use and Benefit of the aforesaid S. K. then this Surrender aforesaid shall be void and of no Vigour; otherwise it shall remain in full Force and Effect.

A Surrender of Copyhold Lands in Fee to several Uses, in Consideration of Marriage, presented, and Admittance thereon.

IT is found by the Homage aforesaid, that A. B. who held to him and his Heirs of the Lord of this Manor, according to the Custom of the Manor aforesaid, one Messuage or Tenement, and, &c. Lands, within the said Manor, since the last Court, and out of Court, surrendered into the Hands of the Lord, by the Hands of J. W. and C. H. two customary Tenants of the Manor aforesaid, according to the Custom of this Manor, the said Messuage or Tenement and other the Premises aforesaid, with the Appurtenances, To the Use and Behoof of the said A. B. and his Heirs and Assigns, until the Solemnization of a certain Marriage intended (by God's Permission) shortly to be had and solemnized between C. B. Son and Heir apparent of the said A. B. of the one Part, and E. C. of, &c. aforesaid, Spinster, of the other Part; and from and immediately after the Solemnization of the said Marriage, then to the Use and Behoof the said A. B. for and during the Term of his natural Life; and from and immediately after his Decease, then to the Use and Behoof of S. his Wife, for and during the Term of her natural Life; and from and immediately after the Decease of him the said A. B. and S. his Wife, and the Decease of the Survivor of them, then to the Use and Behoof of the said C. B.
for

for and during the Term of his natural Life; and from and immediately after the Decease of them the said *A. B.* and *S.* his Wife and *C. B.* and the Decease of the longest Liver of them, then to the Use and Behoof of the said *E.* intended Wife of the said *C. B.* for and during the Term of her natural Life; and from and immediately after the Decease of them the said *A. B.* and *S.* his Wife, and the said *C. B.* and *E.* his intended Wife, and the Decease of the longest Liver of them, then to the Use and Behoof of the Heirs of the Body of the said *C. B.* on the Body of the said *E.* lawfully begotten, or to be begotten; and for Default of such Issue, then to the Use and Behoof of the Heirs and Assigns of the said *C. B.* for ever: *To be holden* of the Lord by the Rod, at the Will of the Lord, according to the Custom of the Manor aforesaid; which said *A. B.* and *S.* his Wife since the last Court are dead. *And now* at this Court came the said *C. B.* in his proper Person, and desired to be admitted to the said Messuage or Tenement and other the Premises aforesaid, with the Appurtenances, whereupon the Lord by his Steward aforesaid, hath granted him Seisin thereof by the Rod; *To have and to hold* to the said *C. B.* and his Assigns for and during the Term of his natural Life, and to remain from thenceforth as above limited, *To be held* of the Lord by the yearly Rent of, &c. and other Services therefore formerly due and of Right accustomed; and he gives to the Lord for a Fine, &c. doth his Fealty, and is admitted Tenant thereof.

A Surrender of Copyhold Land, to the Use of a Man's Last Will and Testament.

AT this Court it is found and presented by the Homage aforesaid, That *W. H.* Gentleman, a customary Tenant of this Manor, since the last Court and before this Court, that is to say, the Day of, &c. he surrendered out of Court into the Hands of the Lord of the Manor aforesaid, by the Hands and Acceptance of *D. T.* and *R. G.* two customary Tenants of the said Manor, &c. All that his Messuage or Tenement and two Acres of customary Land, with the Appurtenances, held of the Manor aforesaid, and which now are or some Time were called, &c. And all that customary Messuage or Tenement, and ten Acres of customary and heriotable Land in, &c. some Time called, &c. Also all that other customary Messuage, &c. All which said Messuages or Tenements, Lands, Hereditaments and Premises, are situate, lying and being within the Manor aforesaid, and held of the same Manor; and also all other his customary Lands, Tenements and Hereditaments whatsoever held of the Manor aforesaid; *To the Use* of the Last Will and Testament in Writing of him the said *W. H.* and such Person or Persons, and his or their Heirs, to whom the said *W. H.* by such his Last Will and Testament shall Devise the same.

A Re-

A Recital and Presentment of two Surrenders, the last to the Use of the Will, which is produced in Court, and Admission accordingly.

WHereas at a Court held for this Manor the Day of, &c. in the Year, &c. T. H. Clerk, and F. H. Doctor of Physick, and J. his Wife were admitted Tenants to one Messuage or Tenement, and a Close of Land containing by Estimation, &c. lying in E. within the Manor aforesaid, and also one other Close of Land, &c. To hold the said Messuage and Premisses, to the Use of the said T. H. F. H. and J. for the Term of their Lives, and the Life of either of them longest Living, the Remainder thereof to the Heirs of the said T. H. And whereas at another Court held for this Manor the Day and Year, &c. the said T. H. surrendred into the Hands of the then Lord of this Manor, by the Hands of the then Steward, his Reversion of the said Messuage and all other the Premisses, immediately after the Decease of them the said T. H. F. H. and J. to the Use of S. then the Wife of the said T. H. and her Assigns during her Life, which said S. was admitted thereto. And whereas also at another Court held for this Manor, the Day, and Year, &c. the said T. H. surrendred the same Premisses, to the Use of his Last Will and Testament in Writing, as in and by the several Rolls of the same Courts above-mentioned more fully and plainly appears. Now at this Court it is found and presented by the Homage there, that the said T. H. since the last and before this Court

Court is dead, and that upon his Death three Heriots happen and are due to the Lord of this Manor; and it is also found by the Homage aforesaid, that the aforesaid S. F. H. and J. were all dead before the said T. H. And furthermore it is found by the same Homage, that the said T. H. by his Last Will and Testament in Writing, (brought here into Court) under the Hand and Seal of the said T. bearing Date the Day, &c. in the Year, &c. did give and devise the said Messuage and Premises as follows, in these Words, that is to say, *Whereas I have surrendered all my Copyhold Lands, Tenements and Hereditaments, lying within the Manor of, &c. in the County of W. To such Uses, Intents and Purposes, as by my Last Will and Testament should be expressed, limited and declared, as by the Surrenders thereof, and Copies of Court-Rolls of the said Manor may appear: Now I do by this my Last Will and Testament express, limit and declare, That the said Surrenders of my said Copyhold Lands shall be to the Use of my dear Wife E. H. her Heirs and Assigns; and my Mind and Will is, that she shall have the said Lands and Premises to her, her Heirs and Assigns for ever.* And the said E. H. being present here in Court, (and producing the said Last Will and Testament of her said late Husband, as is aforesaid) desired that she might be admitted Tenant to the Messuage or Tenement and other the Premises aforesaid; whereupon the Lord of the Manor aforesaid, by his Steward aforesaid, at this Court hath granted and delivered to her Seisin thereof by the Rod: *To have and to hold* the said Messuage or Tenement and all and singular other the Premises, with the Appurtenances, to the said E. H. her
Heirs

Heirs and Assigns for ever, of the Lord by the Rod, at the Will of the Lord, according to the Custom of the Manor aforesaid; By the Rents and Services therefore formerly due and of Right accustomed, and the said *E. H.* hath paid to the Lord for a Fine to be admitted to have the said Premises thirty and five Pounds Sterling, and doth her Fealty, and she is admitted Tenant thereof, &c.

A Surrender of Copyhold Lands in Fee to the Use of a Will presented, Admittance of the Devisee, and Release of the Heir.

AT this Court the Homage present, That *A. B.* a customary Tenant of this Manor, by a certain Surrender bearing Date the Day and Year, &c. surrendred into the Hands of the Lord of the Manor aforesaid by the Rod, by the Hands and Acceptance of *C. D.* and *E. F.* two other customary Tenants of the said Manor, All that customary Messuage or Tenement, &c. and also the Lands, &c. with all Commons, Commodities and Appurtenances whatsoever to the said Messuage or Tenement and Premises belonging or appertaining, *To the Use and Beboof* of such Person and Persons, and for such Estate or Estates, as he the said *A.* in and by his Last Will and Testament in Writing, under his Hand and Seal should Name, direct and appoint: And further they present, that after the Making of the Surrender aforesaid, and before the holding this Court, the said *A.* made and ordained his Last Will and Testament in Writing, bearing Date the Day of, &c. and Year, &c. And by the same (among
other

348 **Of Copyhold Estates, &c.**

other Things) did give and devise in these following Words, that is to say; *I also give and bequeath unto my youngest Son T. B. my Messuage or Tenement at, &c. in the Occupation of, &c. with the Appurtenances thereunto belonging, To the Use and Behoof of the said T. B. his Heirs and Assigns for ever*; and afterwards he died: Now at this Court came the said *T. B.* and desired to be admitted to the said Messuage and Premisses, with the Appurtenances, according to the Form and Effect of the said Will; whereupon the Lord by his Steward aforesaid, hath granted him Seisin thereof by the Rod: *To have and to hold* the same to the said *T.* and his Heirs, according to the Tenor of the said Will, at the Will of the Lord, according to the Custom of the Manor aforesaid; *By the Rent, Services and Customs therefore formerly due and of Right accustomed, and he gives to the Lord for a Fine, &c. and is admitted Tenant thereof, but his Fealty is respited until he comes of Age, &c.* Afterwards at the same Court came *W. B.* eldest Son and Heir of the said *A. B.* deceased, and in full and open Court surrendered, remised and released all his Estate, Right, Title, Interest, Claim and Demand whatsoever of and in the Premisses aforesaid, and every Part thereof, To the said *T. B.* and his Heirs for ever.

Some

**Some other useful Precedents of Deeds
and Writings, relating to Estates.**

*A Frechold Lease of Lands for three
Lives absolute.*

THIS Indenture made the Day, &c. in the Twelfth Year of the Reign of our Sovereign Lord George the Second, &c. and in the Year of our Lord, &c. *Between T. D. of, &c. in the County of W. Esq; of the one Part, and J. E. of, &c. in the County, &c. Yeoman, of the other Part: Witnesseth* that the said *T. D.* for and in Consideration of the Sum of, &c. of lawful Money of *Great Britain*, to him in Hand paid by the said *J. E.* before the Sealing and Delivery of these Presents, the Receipt whereof he the said *T. D.* doth hereby acknowledge, and thereof and of every Part thereof, doth acquit and discharge the said *J. E.* his Heirs, Executors and Administrators, for ever by these Presents; *Hath* demised, granted, and to Farm letten, and by these Presents doth demise, grant and to Farm let unto the said *J. E.* *All* that Messuage or Tenement situate, lying and being in, &c. aforesaid, with all Houses, Edifices, Buildings, Gardens, Orchards, Backsides, Ways, Waters, Easements, Commons, and Appurtenances, to the said Messuage or Tenement and Lands belonging or appertaining, or therewith usually used, letten or occupied, accepted and taken as Part, Parcel, or Member thereof, or of any Part thereof;

To

To have and to hold the said Messuage or Tenement and Premises, with all and singular the Appurtenances, unto the said *J. E.* his Heirs and Assigns, from the Day of the Date of these Presents, for, by and during the natural Lives of him the said *J. E.* and *R. E.* his Son, and *W. E.* Son of, &c. and for and during the Life natural of every and either of them longest living: *Yielding and paying* therefore yearly during the said Term, unto the said *T. D.* his Heirs and Assigns, the yearly Rent or Sum of, &c. at and upon the Feast-Days of the Annunciation of the Blessed Virgin *Mary*, and *St. Michael* the Archangel, by even and equal Portions. *And* if it shall happen the said yearly Rent of, &c. to be behind and unpaid in Part, or in the Whole, by the Space of eight and twenty Days next after either of the said Feasts or Days of Payment, on which the same ought to be paid as aforesaid, being lawfully demanded, and no sufficient Distress or Distresses in or upon the said Premises can or may be found, whereby the same may be levied; that then, and from thenceforth, it shall and may be lawful to and for the said *T. D.* his Heirs and Assigns, into the before demised Premises, with the Appurtenances, or into any Part thereof, in the Name of the Whole to re-enter, and the same to have again, repossess and enjoy, as in his or their former Right and Estate; and the said *J. E.* his Heirs and Assigns, from and out of the same, from thenceforth utterly to expel, amove, and put out; this Indenture, or any Thing herein contained to the contrary thereof in any wise notwithstanding. *And* the said *J. E.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *T. D.* his Heirs and Assigns, that he the said *J. E.* his Heirs and Assigns, shall and will well and truly pay, or

cause to be paid unto the said *T. D.* his Heirs or Assigns, the said yearly Rent above reserved, at the Days and Times above expressed, according to the true Intent and Meaning of these Presents; *And also*, that he the said *J. E.* his Heirs and Assigns, shall and will from Time to Time, and at all Times, during the said Term hereby granted, well and sufficiently repair, maintain, sustain, uphold, amend and keep, the before demised Messuage, Tenement and Premises, and every Part and Parcel thereof, with the Appurtenances, in, by and with all and all Manner of needful and necessary Reparations whatsoever, when and as often as need shall require: And the same so well and sufficiently repaired, maintained, sustained, upheld and kept, at the End, Expiration, or other sooner Determination of the said Term hereby granted, unto the said *T. D.* his Heirs and Assigns, shall and will peaceably and quietly leave and yield up. *And* the said *T. D.* doth for himself, his Heirs and Assigns, and for every of them, covenant, promise and grant, to and with the said *J. E.* his Heirs and Assigns, by these Presents, that by and under the Rent, Covenants and Agreements, before, in and by these Presents mentioned and contained, it shall and may be lawful to and for the said *J. E.* his Heirs and Assigns, from Time to Time, and at all Times, during the said Term hereby granted, quietly and peaceably to have, hold, use, occupy, possess and enjoy, the before demised Premises, and every Part and Parcel thereof, with the Appurtenances, without the lawful Let, Suit, Trouble, Interruption or Denial of the said *T. D.* his Heirs or Assigns, or of any other Person or Persons whatsoever, lawfully claiming, or to claim, any Right, Title or Interest, from, by or under him, them, or any or either of them. *And* the said

said *T. D.* hath made, ordained, constituted and appointed, and by these Presents doth make, ordain, constitute and appoint *S. W.* of, &c. and *R. D.* of, &c. his true and lawful Attornies, jointly and severally, for him and in his Name, to enter into and upon all and singular the before demised Premises, or into some Part thereof, in the Name of the Whole, and peaceable Possession and Seisin thereof, or of some Part thereof, in the Name of the Whole to take; and after such Possession and Seisin thereof so had and taken, then the like peaceable Possession and Seisin thereof, or of some Part thereof, in the Name of the Whole, to deliver over unto the said *J. E.* or to his certain Attorney or Attornies in that Behalf, to be by the said *J. E.* lawfully authorized; *To hold* to him, his Heirs and Assigns, according to the Purport, true Intent and Meaning of these Presents; hereby ratifying and allowing all and whatsoever his said Attornies, or either of them, shall do in and about the Premises. *In Witness* whereof the Parties first above named have to these present Indentures interchangeably set their Hands and Seals, the Day and Year above written.

The Livery and Seisin indorsed on the Lease.

M*emorandum*, That on the Day of, &c. in the Year, &c. *S. W.* one of the Attornies within named, did enter into the within mentioned Messuage or Tenement, and quiet and peaceable Possession thereof take in the Name of the Whole; and after such Possession and Seisin so had and taken, the like quiet and peaceable Possession did deliver over to the said *J. E.* in his own proper Person;

Person; to hold to him the said J. E. his Heirs and Assigns, according to the Tenor, Form and Effect of the within written Indenture of Lease.

In the Presence of us,
Witnesses thereto,

By me S. W.

J. W.
R. C.

A Mortgage of a Freehold Lease for three Lives.

THIS Indenture made, &c. between A. H. of, &c. of the one Part, and N. G. of, &c. of the other Part: *Whereas* the said A. H. stands seised to him and his Heirs, for his own Life and the Lives of, &c. of and in all that Messuage or Tenement, &c. situate, lying and being, &c. with all Houses, &c. under the yearly Rent of, &c. as by the Lease thereof bearing Date, &c. made and granted by, &c. may appear: *Now this Indenture witnesseth*, That the said A. H. for and in Consideration of the Sum of, &c. of lawful Money of *Great Britain*, to him in Hand paid by the said N. G. at and before the Sealing and Delivery of these Presents, the Receipt whereof the said A. H. doth hereby acknowledge, he the said A. H. Hath granted, bargained and sold, assigned, released and confirmed, and by these Presents doth grant, bargain and sell, assign, release and confirm unto the said N. G. (in his actual Possession now being by Virtue of a Bargain and Sale to him thereof made for one whole Year, by Indenture bearing Date the Day next before the Day of the Date of these Presents, and by Force of the Statute for transferring

ferring of Uses into Possession) and to his Heirs and Assigns, *All* and singular the said Messuage or Tenement and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, and the Rents, Reversions, Remainders and Services thereof, and also all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said *A. H.* of, in and to the said Messuage or Tenement and Premisses above-mentioned, and of, in and to every Part and Parcel thereof, with the Appurtenances: *To have and to hold* all and singular the said Messuage or Tenement, Lands and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *N. G.* his Heirs and Assigns, for and during the natural Lives of the said, &c. and for and during the Life of the longest Liver of them. *Provided* always and upon Condition, that if the said *A. H.* his Heirs or Assigns, do and shall well and truly pay, or cause to be paid unto the said *N. G.* his Executors, Administrators or Assigns, the full Sum of, &c. in and upon the Day, &c. next coming, without any Deduction or Defalcation for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary; that then and from thenceforth these Presents, and every Thing herein contained, shall cease and be void; any Thing herein contained to the contrary notwithstanding. *And* the said *A. H.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *N. G.* his Executors, Administrators and Assigns, that he the said *A. H.* his Heirs or Assigns, shall and will well and truly pay, or cause to be paid unto the said *N. G.* his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon, &c. next coming, without any Deduction as aforesaid, according to the true Intent and

and Meaning of these Presents; *And also* that he the said *N. G.* his Heirs and Assigns, shall and may from Time to Time, and at all Times after Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy the said Messuage or Tenement and Premises above-mentioned, with the Appurtenances, without the Let, Suit, Trouble, Hindrance, Molestation, Interruption and Denial of him the said *A. H.* his Heirs or Assigns, and of all and every other Person and Persons whatsoever. *And further* that he the said *A. H.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premises above mentioned, or any Part thereof, shall and will at any Time or Times after Default shall be made in Performance of the said Proviso or Condition herein contained, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better, and more perfect Granting and Assuring of all and singular the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, unto the said *N. G.* his Heirs and Assigns, to the only proper Use and Behoof of the said *N. G.* his Heirs and Assigns, for and during all the Rest and Residue of the said *A. H.*'s Term and Interest therein, which shall be then to come and unexpired, as by the said *N. G.* his Heirs or Assigns, or his or their Counsel learned in the Law shall be reasonably devised or advised and required. *And lastly*, it is covenanted and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and

it is hereby so declared, that until Default shall be made in Performance of the Proviso or Condition herein contained, he the said *A. H.* his Heirs and Assigns, shall and may hold and enjoy all and singular the said Premises above-mentioned, and receive and take the Rents, Issues and Profits thereof, to his and their own proper Use and Benefit; any Thing herein contained to the contrary thereof notwithstanding. *In Witness, &c.*

N. B. A Freehold Lease for three Lives, may be also mortgaged by way of Demise for 99 Years, if the Lives on the Lease live so long; and then the Security will be a *Chattel* Interest, and go to the Executors and Administrators of the Mortgagee.

A Chattel-Lease for Ninety-nine Years, if three Lives live so long, with Exception of Timber, and Reservation of Heriots, &c.

THIS Indenture made, &c. between *B. C.* of, &c. Esq; of the one Part, and *D. F.* of, &c. of the other Part, *Witneseth* that the said *B. C.* as well for and in Consideration of the Surrender of a former Lease, granted by, &c. unto the said *D. F.* of the Messuage or Tenement and Premises herein after demised for the Term of Ninety-nine Years determinable on the Deceases of, &c. as also for and in Consideration of the Sum of, &c. to him the said *B. C.* in Hand paid by the said *D. F.* at and before the Sealing and Delivery of these Presents, the Receipt whereof he the said *B. C.* doth hereby acknowledge, and thereof doth acquit

quit and discharge the said *D. F.* his Executors, Administrators and Assigns, by these Presents, *Hath* demised, granted, and to Farm letten, and by these Presents doth demise, grant, and to Farm let, unto the said *D. F.* *All* that Messuage or Tenement, with all those Lands, &c. situate, lying and being, &c. and all Houses, Outhouses, Ways, Waters, Easements, and Appurtenances, &c. to the said Messuage or Tenement, Lands and Premises belonging, or any ways appertaining, (except all Timber-Trees, and Trees fit and proper to be raised and preserved for Timber, now standing, growing or being, or which shall hereafter stand, grow or be, in or upon the said Premises, or any Part thereof, with free Liberty for the said *B. C.* his Heirs and Assigns, to fell, cut down, take and carry away the same, at all seasonable Times): *To have and to hold* the said Messuage or Tenement, Lands and Premises above granted, and every Part and Parcel thereof, with the Appurtenances, (except before excepted) unto the said *D. F.* his Executors, Administrators and Assigns, from the Day of the Date of these Presents, for and during, and unto the full End and Term of Ninety-nine Years from thence next ensuing, and fully to be compleat and ended, if he the said *D. F.* and *M.* his Wife, and *W. F.* his Son, or any or either of them, shall so long happen to live; *Yielding and paying* therefore yearly during the said Term unto the said *B. C.* his Heirs and Assigns, the Rent of, &c. at and upon the Feasts of, &c. by even and equal Portions; *And also yielding and paying* at and upon the Death or Decease of the said *D. F.* the best Beast or Goods, or the Sum of, &c. for and in the Name of an Heriot; and also at and upon the Death or Decease of the said *M.* his Wife, (she dying after the said *D. F.*) the best Beast or Goods,

or the Sum of, &c. for and in the Name of another Heriot; and also at and upon the Death or Decease of the said *W. F.* (he dying successively after the said *D. F.* and *M.*) the best Beast or Goods, or the Sum of, &c. for and in the Name of another Heriot, (or paying the Sum of, &c. upon the Decease of every of them the said *D. F.* *M. F.* and *W. F.* they dying successively as they are herein named, for and in the Name of an Heriot); *And doing* Suit and Service to and at all and every the Court and Courts of the said *B. C.* his Heirs and Assigns, to be from Time to Time during the said Term, holden in and for the Manor of, &c. aforesaid, and there be ordered and justified in all Things touching the said Premises, as other the Tenants of the said Manor for their respective Estates are, shall or ought to be. *And* if it shall happen the said yearly Rent of, &c. or Sums of Money reserved for Heriots, or any Part thereof, to be behind and unpaid by the Space of Twenty-one Days next after either of the said Feasts or Days of Payment, on which the same ought to be paid as aforesaid, (being lawfully demanded) and no sufficient Distress or Distresses in or upon the said Premises, can or may be found, whereby the same may be levied; or if the said *D. F.* his Executors or Administrators, do or shall alien, let, assign or demise the said Premises, or any Part thereof, to any Person or Persons whatsoever, for any longer Time or Term than one whole Year, at any one Time, without the Special Licence and Consent of the said *B. C.* his Heirs or Assigns, or of the Steward of the said Manor for the Time being, first had and obtained in Writing under his or their Hands and Seals for the doing thereof; that then and in either of the said Cases, from thenceforth it shall and may be lawful, to and for

for the said *B. C.* his Heirs and Assigns, into the said Messuage or Tenement, Lands and Premises hereby demised, with the Appurtenances, to re-enter, and the same to have again, repossess and enjoy, as in his or their former Right and Estate; any Thing herein contained to the contrary notwithstanding. *And* the said *D. F.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *B. C.* his Heirs and Assigns, that he the said *D. F.* his Executors, Administrators and Assigns, shall and will well and truly pay, or cause to be paid unto the said *B. C.* his Heirs or Assigns, the said yearly Rent and Heriots above reserved, at the Days and Times, and in Manner and Form above expressed, according to the true Intent and Meaning of these Presents; *And also* that he the said *D. F.* his Executors, Administrators and Assigns, at his and their own proper Costs and Charges, shall and will from Time to Time, and at all Times, during the said Term hereby granted, well and sufficiently repair, maintain, sustain, uphold, amend, hedge, ditch and keep the said Messuage or Tenement, Lands and Premises hereby demised, and every Part and Parcel thereof, with the Appurtenances, in and with all Manner of needful and necessary Reparations and Amendments whatsoever, when and as often as need shall require; and the same so well and sufficiently repaired, maintained, sustained, upheld, amended, hedged, ditched and kept, at the End, Expiration, or other Determination of the said Term hereby granted, unto the said *B. C.* his Heirs and Assigns, shall and will peaceably and quietly leave and yield up. *And* the said *B. C.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *D. F.* his Executors, Administrators and Assigns, by these Presents, that (by

and under the yearly Rent, Heriots, Covenants and Agreements before, in and by these Presents mentioned and contained) he the said *D. F.* his Executors, Administrators and Assigns, shall and may peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage, or Tenement, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, (except before excepted) for and during the said Term hereby granted, without any Interruption or Denial of the said *B. C.* his Heirs or Assigns, or of any other Person or Persons whatsoever lawfully claiming or to claim any Right, Title or Interest, from, by or under him, them, or any or either of them. *In Witness, &c.*

A Covenant to entertain the Steward, on keeping Courts, in a Lease of the capital Messuage of the Manor.

AND also that he the said *D. F.* his Executors, Administrators and Assigns, shall and will at his and their own proper Costs and Charges, from Time to Time, and at all Times during the said Term hereby granted, find and provide to and for the Steward and Officers of the said *B. C.* his Heirs and Assigns, for the Time being, at such Time as they shall come to keep Court at the said Manor of, &c. sufficient and convenient Meat, Drink, and Lodging, Man's Meat and Horse-meat, so as they exceed not the Number of, &c. Persons and Horses, at any such Time, and so as they come thither not above twice in any one Year, and continue there not above two Days and two Nights at any one of those Times.

*A Lease of Copyhold Lands by Virtue
of a Copy of Licence, with proper Cove-
nants.*

THIS Indenture made, &c. between *W. B.* of, &c. of the one Part, and *R. D.* of, &c. of the other Part, *Witnesseth* that the said *W. B.* by Virtue of a Licence, before the Sealing and Delivery of these Presents, by him obtained of and from *T. D.* Esq; Lord of the Manor of, &c. for the granting and letting to Farm the Messuage or Tenement and Lands hereafter in and by these Presents demised to the said *R. D.* *Hath* demised, leased and to Farm let, and by these Presents doth demise, lease and to Farm let, unto the said *R. D.* his Executors, &c. *All* that Messuage or Tenement situate, &c. and also all those Lands, &c. *To have and to hold* the said Messuage or Tenement, Lands and Premisses, with the Appurtenances, unto the said *R. D.* his Executors, Administrators and Assigns, from the Day of the Date of these Presents, for and during the Term of seven Years, from thence next ensuing, and fully to be compleat and ended; *Yielding and paying* therefore yearly, and every Year, during the said Term, unto the said *W. B.* his Heirs and Assigns, the yearly Rent or Sum of, &c. of lawful Money of *Great Britain*, in and upon, &c. *And* if it shall happen the said yearly Rent to be behind and unpaid, &c. (Here a Clause of *Distress*, and the usual Covenants to pay the Rent, and repair the Premisses, &c.) *And also* the said *R. D.* for himself, his Executors, Administrators and Assigns, and every of them, doth covenant, promise and grant to and with the said
W. B.

W. B. his Heirs, Executors and Assigns, that he the said *R. D.* his Executors, Administrators or Assigns, nor any of them, shall do, or wittingly or willingly permit to be done, any Act, Matter, or Thing whatsoever, which may forfeit, lose, or impair the Estate or Interest of the said *W. B.* of, in or to the said hereby demised Premises, or of, in or to any Part or Parcel thereof, or which may be otherwise prejudicial to the said *W. B.* his Heirs or Assigns, for or concerning the having, holding, or enjoying of the same, or any Part thereof. *And* the said *W. B.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *R. D.* his Executors and Assigns, that he the said *R. D.* his Executors and Assigns, under and upon Payment of the said yearly Rent, and Performance of the Covenants and Agreements aforesaid, which on his and their Parts and Behalves are and ought to be performed, shall and may quietly and peaceably have, hold and enjoy all and singular the before mentioned to be hereby demised Premises, and every Part and Parcel thereof, with the Appurtenances, during the Term hereby demised, without any Interruption, Molestation or Eviction of him the said *W. B.* his Heirs and Assigns, or of any Person or Persons whatsoever lawfully claiming, or that shall or may claim any Estate, Right, Title or Interest of, in or to the same, or any Part thereof, by, from or under him, them, or any of them; *And also* that he the said *W. B.* his Heirs, Executors and Assigns, or some or one of them, shall and will from Time to Time, and at all Times hereafter discharge, or upon reasonable Request save harmless, and keep indemnified the said *R. D.* his Executors and Assigns, of and from all Quit-Rents, Payments, Duties and Services, to be had, paid, made or done, for or out of the said hereby demised

demised Premises, or any Part thereof, to the said T. D. Lord of the Manor aforesaid, his Heirs and Assigns. *In Witness, &c.*

A Mortgage of a Copyhold Estate held for Lives, by Power of Licence to demise it for Twenty-one Years.

THIS Indenture made, &c. between A. T. of, &c. of the one Part, and M. C. of, &c. of the other Part: *Whereas* the said A. T. by Copy of Court-Roll of the Manor of, &c. bearing Date, &c. doth hold of the Right Honourable T. Lord B. for the Term of his Life, and the Lives of F. T. and E. T. his Sons, and the Life of either of them longest living successively, at the Will of the Lord, according to the Custom of the said Manor, one Messuage or Tenement, with the Appurtenances lying within the said Manor, now in the Possession of, &c. *By and under* the yearly Rent, &c. and one Heriot when it shall happen, and by and under all other Rents, Suits and Services, therefore due and of Right accustomed: *And whereas* by the said Copy of Court-Roll Licence is granted to the said A. T. to demise and let the said Messuage or Tenement, &c. to any Person or Persons whatsoever for the Term of Twenty-one Years then next following, if they the said A. T. F. T. and E. T. or any or either of them should so long live; so as the said Messuage or Tenement be from Time to Time well and sufficiently repaired, and the Rents, Suits and Services therefore due to the Lord, be well and truly rendered and paid, as by the said Copy of Court-Roll may more fully appear: *Now this Indenture witnesseth*, that the said A. T. by Virtue of the said Licence and
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Authority in and by the said Copy of Court-Roll granted as aforesaid, and in Consideration of the Sum of, &c. to him in Hand paid by the said *M. C.* at and before the Sealing and Delivery of these Presents, the Receipt whereof he the said *A. T.* doth hereby acknowledge, and thereof and of every Part thereof, doth release, acquit and discharge the said *M. C.* his Executors, Administrators and Assigns, by these Presents, *Hath* demised, granted and to Farm letten, and by these Presents doth demise, grant, &c. unto the said *M. C.* *All* that the said Messuage or Tenement, in and by the said recited Copy of Court-Roll granted, with the Appurtenances, and also all Ways, Waters, Easements, &c. to the same belonging, or in any wise appertaining: *To have and to hold* the said Messuage or Tenement and Premises hereby granted, or mentioned or intended to be granted, with all and every the Appurtenances, unto the said *M. C.* his Executors, Administrators and Assigns, from the Day, &c. (*the Date of the Copy of Licence*) last past, before the Date of these Presents, for and during, and unto the full End and Term of Twenty-one Years from thence next ensuing, and fully to be compleat and ended, if he the said *A. T.* and *F. T.* and *E. T.* his Sons, or any or either of them shall so long happen to live; *Yielding, paying,* doing and performing, during the said Term, all the Rents, Heriots, Suits, Services and Customs, which shall become and grow due for the same, and which by the said *A. T.* *F. T.* and *E. T.* or either or any of them, are or should, or ought to be from Time to Time paid, done, rendered and performed. *Provided* always, and upon Condition, that if the said *A. T.* his Heirs, Executors or Administrators, do well and truly pay, or cause to be paid unto the said *M. C.* his Executors, Ad-

Administrators or Assigns, the full Sum of, &c. of lawful Money, &c. at or upon the Days, &c. without any Deduction, Defalcation or Abatement, for or on Account of any Taxes, Charges or Impositions whatsoever, that then and from thenceforth, these Presents, and every Thing herein contained, shall cease, determine and be void; and then and from thenceforth it shall and may be lawful, to and for the said *A. T.* or such Person or Persons to whom the same Premises shall belong, according to the Custom of the said Manor of, &c. To have, possess and enjoy all and singular the said Premises above-mentioned, with the Appurtenances, and receive the Rents and Profits thereof, as in his or their former Right and Estate; any Thing herein contained to the contrary thereof in any wise notwithstanding. *And* the said *A. T.* for himself, his Heirs, Executors and Administrators, and for every of them, doth covenant and grant to and with the said *M. C.* his Executors, Administrators and Assigns, by these Presents, that he the said *A. T.* his Heirs, Executors or Administrators, or some or one of them, shall and will well and truly pay, or cause to be paid unto the said *M. C.* his Executors, Administrators or Assigns, the said Sum of, &c. at the several and respective Days and Times before limited and appointed in the above written Proviso, according to the true Intent and Meaning of these Presents; and that without any Manner of Deduction or Abatement whatsoever, for or upon Account of any Taxes, Charges or Impositions whatsoever, as aforesaid; *And also* that he the said *A. T.* at the Time of the Sealing and Delivery of these Presents, is true and lawful Owner of the said Messuage or Tenement and Premises above mentioned to be hereby demised, with the Appurtenances; *And that* by Virtue of the said recited

recited Copy of Court-Roll, and the Licence therein and thereby granted, he the said *A. T.* hath good Right, full Power, and lawful and absolute Authority, to demise, grant and to Farm let, the said Messuage or Tenement and Premises before hereby granted, with the Appurtenances, unto the said *M. C.* his Executors, Administrators and Assigns, for and during all the said Term of Twenty-one Years, determinable as aforesaid, in Manner and Form aforesaid; *And* that from and after Breach or Default shall be made in Performance of the Proviso or Condition aforesaid, it shall and may be lawful to and for the said *M. C.* his Executors, Administrators and Assigns, from Time to Time, and at all Times during the said Term hereby granted, quietly and peaceably to have, hold, occupy, possess and enjoy the said Messuage or Tenement and Premises hereby demised, or mentioned or intended to be hereby demised, with the Appurtenances, and the Rents, Issues and Profits thereof to take and receive, to and for his and their own proper Use and Behoof, without any the Let, Trouble, Interruption, Suit in Law or Equity, Eviction, Ejection, Disturbance or Denial of or by the said *A. T.* or the said *F. T.* and *E. T.* or either of them, their or either of their Executors, Administrators or Assigns, or of any other Person or Persons whatsoever, by Virtue of any Custom of the Manor of, &c. aforesaid, or by any other Right or Title whatsoever. *And further*, that he the said *A. T.* his Heirs, Executors and Administrators, and all and every other Person and Persons lawfully claiming or deriving, or which shall or may lawfully claim or derive any Estate, Right, Title, Interest, Claim or Demand, of, in or out of the said Messuage or Tenement and Premises hereby granted, or mentioned or intended

tended to be hereby granted, or any Part thereof, shall and will at any Time or Times after Default shall be made in Performance of the Proviso or Condition aforesaid, upon the reasonable Request of the said *M. C.* his Executors, Administrators or Assigns, make, do, execute and suffer, or cause or procure to be made, done, executed and suffered, all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Assurance and Assurances in the Law whatsoever, for the further, better, and more perfect and absolute Assuring, Sure-making, and Confirming of all and singular the Premises above-mentioned, with the Appurtenances, unto the said *M. C.* his Executors, Administrators and Assigns, for and during the Term hereby granted, without Power or Equity of Redemption, according to the true Intent and Meaning of these Presents; as by the said *M. C.* his Executors, Administrators or Assigns, or his or their Counsel learned in the Law shall be reasonably devised, advised and required. *In Witness, &c.*

*A Covenant for a Person to be admitted
Tenant to a Copyhold in Fee, upon Failure
of paying Mortgage Money, &c.*

AND the said *A. T.* for himself, his Heirs, Executors and Administrators, doth consent, covenant and agree, to and with the said *M. C.* his Heirs and Assigns, that upon Failure of Payment of the said Sum of, &c. or any Part thereof, contrary to the Tenor of the Proviso or Condition above-mentioned, he the said *M. C.* his Heirs, Executors or Administrators, shall and may be admitted Tenant or Tenants to all and every the Copyhold Premises aforesaid, and enter into, have, hold and
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injoy the same peaceably and quietly as fully to all Intents and Purposes, as he or they might have done if a former Surrender of the said Premisses (recited to be made to, &c.) had not been made.

A Settlement of a Copyhold Estate in Fee, made on an intended Marriage, as a Jointure to the Wife, and Provision for Children.

THIS Indenture tripartite, made, &c. between *W. S.* of, &c. of the first Part, *M. S.* of, &c. Nephew of the said *W. S.* of the second Part, and *R. D.* and *J. D.* both of, &c. aforesaid, of the third Part: *Whereas* the said *W. S.* at the Time of the Sealing and Delivery of these Presents, is and standeth lawfully and rightfully seised of and in all and singular the Copyhold Lands, Tenements and Hereditaments, with the Appurtenances, herein after demised, of a good Estate in Fee-simple, according to the Custom of the Manor of, &c. (with Power to let and demise the said Premisses, &c.) as by a Copy of Court-Roll of the said Manor, at a Court there holden the Day, &c. in the Year, &c. Relation being thereunto had, may more fully appear: *And whereas* there is a Marriage intended (by the Permission of God) shortly to be had and solemnized between the said *M. S.* and *M. J.* Daughter of *J. J.* of, &c. by Reason whereof, in Case the said Marriage takes Effect, the said *M. S.* will receive a considerable Sum of Money as and for the Marriage Portion with the said *M.* his intended Wife, to be paid unto him by the said *J. J.* as soon as the said Marriage shall be fully consummated: *Now this Indenture witnesseth*, That as well in Consideration of

of the said Marriage and Premises, and of the natural Love and Affection which he the said *W. S.* hath and beareth unto the said *M. S.* his Nephew, and for the Making and Assuring of some future Maintenance and Provision for the said *M. S.* and the said *M.* his intended Wife, (in Case the said Marriage takes Effect) and to enable him the said *M. S.* to provide for their Issue, as also for divers other good and valuable Considerations him the said *W. S.* thereunto moving, he the said *W. S.* hath granted, bargained, sold, demised, set, and to farm letten, and by these Presents doth grant, bargain, sell, demise, set, and to farm let, unto the said *R. D.* and *J. D.* All that Messuage, Tenement or Dwelling house, with the Out-houses, Backside, Garden and Orchard thereunto belonging, situate, lying and being in, &c. And also all those four Closes of Meadow or Pasture Ground, containing by Estimation, &c. be the same more or less, likewise situate and lying in, &c. aforesaid, called or known by the Name of, &c. and now in the Tenure or Occupation of the said *W. S.* and all Lands, Tenements, Hereditaments, Ways, Paths, Passages, Trees, Wood, Under-wood, Commons, Common of Pasture, Profits, Commodities, Advantages and Appurtenances whatsoever to the said Messuage or Tenement, Lands and Premises hereby demised, or mentioned or intended to be hereby demised, belonging or in any wise appertaining; To have and to hold the said Messuage, Tenement, Lands, Hereditaments and Premises hereby demised, or mentioned or intended to be hereby demised, and every Part and Parcel thereof, with their and every of their Appurtenances, unto the said *R. D.* and *J. D.* their Executors, Administrators and Assigns, from the Day next before the Date of these Presents, for and during and unto

the full End and Term of Fourscore and nineteen Years from thence next ensuing, and fully to be compleat and ended: *Yielding*, paying, doing and performing, all such Rents, Fines, Customs, Suits and Services, as from thenceforth shall from Time to Time during the said Term, according to the Custom of the said Manor of, &c. become therefore due and of Right accustomed: *Upon* the special Trust and Confidence nevertheless, and to and for the several Uses, Intents and Purposes hereafter in these Presents limited, expressed and declared, and to and for no other Use, Intent or Purpose whatsoever; (that is to say) To the Use, Intent and Purpose, that they the said *R. D.* and *J. D.* and the Survivor of them, and the Executors and Administrators of such Survivor, do and shall permit and suffer the said *W. S.* and his Assigns, to have, hold, occupy, possess and enjoy, all and singular the before demised Premises, with their and every of their Appurtenances, and every Part and Parcel thereof, and to receive and take the Rents, Issues and Profits thereof, and of every Part thereof, to his and their own proper Use and Behoof, for and during so many Years of the said Term hereby granted, as shall run out and expire in the Life time of the said *W. S.* without Impeachment of or for any Manner of Waste; and from and immediately after the Decease of the said *W. S.* do and shall permit and suffer the said *M. S.* and his Assigns, to have, hold, occupy, possess and enjoy, all and singular the before demised Premises, with their and every of their Appurtenances, and every Part and Parcel thereof, and to receive and take the Rents, Issues and Profits thereof, and of every Part thereof, to his and their own proper Use and Behoof, for and during so many Years of the said Term hereby granted, as after the Decease of the said

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said *W. S.* shall run out and expire in the Life-time of the said *M. S.* without Impeachment of or for any Manner of Waste ; And from and after the several Deceases of the said *W. S.* and *M. S.* do and shall permit and suffer the said *M. J.* intended Wife of the said *M. S.* (in Case the said Marriage shall take Effect) and her Assigns, she surviving the said *M.* her intended Husband, to have, hold, occupy, possess and enjoy all and singular the before demised Premisses, with their and every of their Appurtenances, and every Part and Parcel thereof, and to receive and take the Rents, Issues and Profits thereof, and of every Part thereof, to her and their own proper Use and Benefit, for and during so many Years of the said Term hereby granted, as after the several Deceases of them the said *W. S.* and *M. S.* shall run out and expire in the Life-time of the said *M. J.* And from and immediately after the Decease of her the said *M.* do and shall permit and suffer such Child or Children which shall hereafter be begotten by the said *M. S.* on the Body of the said *M.* as he the said *M. S.* shall by any Deed or Writing under his Hand and Seal, testified by Two or more credible Witnesses, or by his Last Will and Testament, direct, limit, and appoint the same ; to have, hold, occupy, possess and enjoy all and singular the before demised Premisses, and to receive and take the Rents, Issues and Profits thereof, and of every Part and Parcel thereof, to his, her, and their own proper Use or Uses and Behoofs, in such Manner, and by such Parts and Portions, and in such Quantities, as shall be by him so directed and appointed, for and during all the Rest, Residue and Remainder of the said Term hereby demised, which shall be then to come and unexpired. And the said *W. S.* for himself, his Heirs, Executors and Admi-

nistrators, doth covenant, promise and grant to and with the said *R. D.* and *J. D.* their Executors, Administrators and Assigns, by these Presents, That for and notwithstanding any Act, Matter or Thing at any Time heretofore by him had, made, committed, done or suffered to the contrary, he the said *W. S.* hath in himself full Power, good Right, true Title, and lawful and absolute Authority, to grant, bargain, sell, demise, set and to farm let the before demised Premises, and every Part and Parcel thereof, with the Appurtenances, unto the said *R. D.* and *J. D.* their Executors, Administrators and Assigns, in Manner and Form aforesaid; *And that* for and notwithstanding any such Act, Matter or Thing as aforesaid, they the said *R. D.* and *J. D.* their Executors, Administrators and Assigns, shall and may from Time to Time, and at all Times, during the said Term hereby granted, lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy all and singular the before demised Premises, with their and every of their Appurtenances, and every Part and Parcel thereof; To the several and respective Uses, Intents and Purposes, and upon the Trusts above-mentioned, without the Let, Suit, Trouble, Denial, Interruption, Molestation, or Disturbance of the said *W. S.* his Heirs or Assigns, or any other Person or Persons whatsoever claiming or to claim, by, from or under him, them, or any of them; Free and clear, and freely and clearly acquitted and discharged, or otherwise by him the said *W. S.* well and sufficiently kept harmless, of and from all and all Manner of former and other Gifts, Grants, Leases, Surrenders, Mortgages, or any other Titles, Troubles and Incumbrances whatsoever had, made, committed, done or suffered by him the said *W. S.* *In Witness, &c.*

A Lease

A Lease of a large Farm in the Country, at a Rack-Rent, for seven Years, with great Variety of special Covenants and Agreements, between the Landlord and Tenant.

THIS Indenture made, &c. between E. B. of, &c. Esq; of the one Part, and T. W. of, &c. Husbandman, of the other Part, Witnesseth, that the said E. B. for and in Consideration of the yearly Rent and Covenants herein after reserved and contained, which on the Part and Behalf of the said T. W. his Executors and Administrators, are and ought to be paid and performed, hath demised, granted, and to farm letten, and by these Presents doth demise, grant, and to farm let, unto the said T. W. All that Messuage, Tenement and Farm, commonly called or known by the Name of, &c. lying and being in the Parish, &c. in the said County of, &c. and late in the Possession of, &c. together with all Barns, Stables, Out-houses, Closes, Grounds, Lands, Meadows, Pastures, Feedings, Commons, Profits, Ways, Waters, Easements and Appurtenances whatsoever to the said Messuage, Tenement and Farm, belonging or in any wise appertaining; (excepting and always reserving out of this present Demise and Grant unto the said E. B. his Heirs and Assigns, the Close, &c. and also except all Timber-Trees, Woods and Under-woods, now standing, growing, or being, or which at any Time during the Term hereby granted shall stand, grow, or be, in or upon the said demised Premises, or any Part thereof; with Liberty to fell, cut down, take and carry

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away the same); *To have and to hold* the said Messuage, Tenement and Farm, and all and singular the said Premises hereby demised, with the Appurtenances, (except before excepted) unto the said *T. W.* his Executors, Administrators and Assigns, from the Five and twentieth Day of *March* next coming, for and during the Term of seven Years thence next ensuing and following, and fully to be compleat and ended; *Yielding and paying* therefore yearly, and every Year, during the said Term hereby granted, unto the said *E. B.* his Heirs and Assigns, the yearly Rent of One hundred and twenty Pounds of lawful Money of *Great Britain*, in and upon the Nine and twentieth Day of *September* and the Five and twentieth Day of *March*, by even and equal Portions: And also yielding and paying, and the said *T. W.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *E. B.* his Heirs and Assigns, to yield and pay at and upon the Days and Times of Payment of the said yearly Rent above reserved, and over and above the same Rent, according to the Rate of five Pounds of lawful *British* Money the Acre, and so proportionably for every greater and lesser Quantity of the Meadow or Pasture Ground hereby demised, which he the said *T. W.* his Executors, Administrators or Assigns, shall at any Time during the said Term hereby granted, ear, plough, spit up, dig or convert to Tillage, or cause or procure, permit, or suffer to be eared, ploughed, spitted up, digged or converted to Tillage; the first Payment thereof, to begin at that Day of Payment of the said yearly Rent above reserved which shall next happen, after any Part of the said Meadow or Pasture Ground shall be so as aforesaid eared, ploughed, spitted up, digged, or converted to Tillage. *And if it shall hap-*

happen the said yearly Rent above reserved, or any Part thereof, to be behind and unpaid, in Part or in the Whole, by the Space of Eight and twenty Days next after either of the said Days or Times whereon the same should, or of Right ought to be paid as aforesaid, being lawfully demanded, that then and from thenceforth it shall and may be lawful to and for the said *E. B.* his Heirs and Assigns, into the said demised Premises, or into any Part thereof, in the Name of the Whole, to re-enter, and the same Premises, and every Part thereof, to have again, repossess and enjoy, as in his and their first and former Estate, Right, Title and Degree; any Thing herein contained to the contrary thereof in any wise notwithstanding. *And* the said *T. W.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *E. B.* his Heirs and Assigns, in Manner and Form following, that is to say, That he the said *T. W.* his Executors, Administrators or Assigns, shall and will well and truly pay, or cause to be paid unto the said *E. B.* his Heirs or Assigns, the said yearly Rent above reserved, at the Days and Times, and in Manner above expressed, according to the Purport and true Meaning of these Presents; *And also* that he the said *T. W.* his Executors, Administrators and Assigns, shall and will keep in good and sufficient Repair during the said Term, all the Glass Windows belonging to the Dwelling house, and all the Walls, Gates, Stiles, Bounds and Fences belonging to the said demised Premises, (being allowed Timber and Frith for the doing thereof by the said *E. B.* his Heirs and Assigns) and scour and cleanse all the Ditches and Water-courses on the said Premises; and shall and will leave the same well and sufficiently repaired, scoured, and cleansed at the End of the said Term;

And shall and will in a Husband-like Manner spend and imploy in and upon the said Premisses, all the Hay, Straw, Fodder, Dung, Muck and Soil, which shall happen to be made, or arise there at any Time during the said Term; and will permit and suffer, &c. the present Tenant to take off his Crop of Corn at the next Harveſt, which shall or may be sown this Year on the said demised Premisses; And also that he the said *T. W.* his Executors, Administrators and Assigns, shall and will sow twenty Acres of the arable Land to Clover every Year during the said Term, and leave twenty-five Acres of the said Land sufficiently sowed with Clover at the End of the said Term; and shall and will also leave yearly, and every Year, during the said Term, one Half of the said arable Land as a summer Fallow unsown: And that the said *T. W.* his Executors, Administrators and Assigns, shall not nor will mow any Part of the Down Ground during the said Term, nor do or commit, or permit or suffer to be done or committed, any Waste, Spoil or Destruction, in or upon the said Premisses, or any Part thereof. And further, that he the *T. W.* shall and will from Time to Time during the said Term, discharge and bear the Offices of Overseer of the Poor, Church-warden, Constable, Tithingman, and all such like personal Offices wherewith the said Premisses shall be charged, when and as often as they shall happen. And the said *E. B.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *T. W.* his Executors, Administrators and Assigns, That he the said *E. B.* his Heirs and Assigns, shall and will at all Times during the said Term hereby granted, well and sufficiently repair, uphold and keep, the said Messuage and other the Houses hereby demised, (except the Glass-Windows thereof) in all
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needful and necessary Reparations, when and as often as need shall require: And shall and will put the Dwelling-house, and Out-houses, Walls, Gates and Fences, in tenantable Repair, on or before Lady-day next; And also shall and will at all Times, during the said Term hereby granted, bear, pay and discharge, or abate, deduct and allow out of the said yearly Rent hereby reserved, all Taxes, Rates and Payments whatsoever, wherewith the said Premises shall or may be charged, or chargeable, (Window Money and such like Taxes as are and shall be at any Time during the said Term particularly laid upon Tenants by Act of Parliament only excepted). *And further*, that he the said *E. B.* his Heirs and Assigns, shall and will yearly during the said Term allow the said *T. W.* his Executors, Administrators and Assigns, Three hundred of Faggots, or the Value thereof in other Wood, for Firing, to be had and taken by the Assignment and Appointment of the said *E. B.* his Heirs or Assigns, or his or their Bailiff, and not otherwise, and to be spent on the said Premises only, and not elsewhere; and sufficient Plough-Timber, or else in Lieu of such Plough-Timber the Sum of one Pound and ten Shillings in Money, at the Election of the said *E. B.* his Heirs and Assigns; *And also* that the said *T. W.* his Executors, Administrators and Assigns, shall and may from Time to Time and at all Times during the said Term hereby granted, (by and under the yearly Rent, Covenants, and Agreements herein contained) peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said Premises hereby demised, with the Appurtenances (except before excepted) without any Let, Trouble, Hinderance, Molestation, Interruption or Denial of him the said *E. B.* his Heirs or Assigns,
and

and of all and every other Person and Persons whatsoever, lawfully claiming or to claim by, from, or under him, them, or any of them: And shall and may hold sixty Acres of the arable Land belonging to the said demised Premisses, from the End of the said Term hereby granted, 'till the End of the Harvest then next following; and the Barn to thrash out his Corn in for a Year after the End of the said Term, and House-room to lodge in, and Liberty to fodder his Cattle upon the Ground called, &c. until the third of *May* after the Expiration of the said Term. *Provided* always, and it is agreed and declared by and between the said Parties to these Presents, That if the said *E. B.* his Heirs or Assigns, shall be minded and desirous to take into his or their own Hands the Possession of the said demised Premisses, at the End of the first five Years of the said Term hereby granted, and of such his or their Mind and Desire, do and shall on the Nine and twentieth Day of *September* next before the End of the said first five Years, give Notice in Writing under his or their Hand or Hands to the said *T. W.* his Executors, Administrators or Assigns, or leave the same for him or them at the Messuage hereby demised, with one of his or their Servants there; that then, and at the End of the first five Years of the said Term, he the said *E. B.* his Heirs and Assigns, may enter into the said demised Premisses, and take Possession thereof accordingly; any Thing herein contained to the contrary thereof in any wise notwithstanding. *Provided also*, and it is further agreed and declared by and between the said Parties to these Presents, that if the said *T. W.* his Executors, Administrators or Assigns, shall be minded and desirous to leave and yield up the said demised Premisses to the said *E. B.* his Heirs or Assigns, at the
End

End of the first five Years of the said Term hereby granted, and of such his or their Mind and Desire, do and shall upon the Nine and twentieth Day of *September* next before the End of the said first five Years, give Notice in Writing under his or their Hand or Hands to the said *E. B.* his Heirs or Assigns, or leave the same for him or them at the Capital Messuage of the said *E. B.* situate in, &c. with one of his or their Servants there; that then and in such Case, the said Term hereby granted, shall at the End of the said first five Years cease and determine; any Thing herein contained to the contrary notwithstanding. *In Witness, &c.*

A Lease of a House in London, with the usual Covenants inserted therein.

THIS Indenture made, &c. between *W. B.* of, &c. in the County of *Middlesex*, Esq; of the one Part, and *F. D.* of the City of *London*, Stationer, of the other Part, *Witnesseth* that for and in Consideration of the Rent and Covenants herein after reserved and contained, on the Part and Behalf of the said *F. D.* his Executors and Administrators to be paid, kept and performed, he the said *W. B.* hath demised, granted, leased, and to farm letten, and by these Presents doth demise, grant, lease, and to Farm let unto the said *F. D.* All that Brick-house, Messuage or Tenement situate, standing and being in the Parish of, &c. in the City of *L.* aforesaid, in, &c. Street, known by the Sign of, &c. now in the Possession or Occupation of, &c. with all and singular Cellars, Sollars, Chambers, Rooms, Garrets, Lights, Ways, Passages, Water-courses, Easements, Profits, Commodities and Appurtenances, to the said Messuage or Tenement

Tenement belonging or appertaining; together with the Use of the Goods in the Schedule hereto annexed mentioned: *To have and to hold* the said Brick-house, Messuage or Tenement, and all and singular the Premises, with their and every of their Appurtenances, herein before-mentioned or intended to be hereby demised, unto the said *F. D.* his Executors, Administrators and Assigns, from the Feast of, &c. next coming, for and during and unto the full End and Term of fourteen Years, from thence next ensuing and fully to be compleat and ended; *Yielding and paying* therefore yearly and every Year, during the said Term, unto the said *W. B.* his Executors, Administrators or Assigns, the Rent or Sum of thirty Pounds of lawful Money of *Great Britain*, on the four most usual Feasts or Terms in the Year, (that is to say) the Feast of *St. Michael* the Archangel, the Birth of our Lord Christ, the Annunciation of the Blessed Virgin *Mary*, and the Nativity of *St. John* the Baptist, by even and equal Portions. *And* if it shall happen the said yearly Rent of thirty Pounds, or any Part thereof, shall be behind and unpaid by the Space of Eight and twenty Days next after any of the said Feast-Days, on which the same ought to be paid as aforesaid, (being lawfully demanded) that then and at all Times then after, it shall and may be lawful to and for the said *W. B.* his Executors, Administrators and Assigns, into the said demised Messuage or Tenement and Premises, or into any Part thereof, in the Name of the Whole, to re-enter, and the same to have again, repossess and enjoy, as in his and their former Estate; and the said *F. D.* his Executors, Administrators and Assigns, and all other the Occupiers of the said demised Premises from thence utterly to expel, remove and put out; any Thing herein contained to the
con-

contrary thereof in any wise notwithstanding. And the said *F. D.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *W. B.* his Executors, Administrators and Assigns, by these Presents, that he the said *F. D.* his Executors, Administrators or Assigns, shall and will during the said Term hereby demised, well and truly pay, or cause to be paid unto the said *W. B.* his Executors, Administrators or Assigns, the said yearly Rent or Sum of thirty Pounds, on the Days and Times, and in Manner and Form above-mentioned, for Payment thereof, according to the Reservation thereof as aforesaid, and the true Intent and Meaning of these Presents; And also, that he said *F. D.* his Executors, Administrators and Assigns, or some or one of them, shall and will at his or their own proper Costs and Charges, well and sufficiently repair, uphold, support, maintain, sustain, amend and keep the said demised Messuage, or Tenement and Premises, with the Glass-Windows, Pavements, Privies, Sinks, Gutters and Wydraughts, belonging to the same, in, by and with all and all Manner of needful and necessary Reparations and Amendments whatsoever, when and as often as Need or Occasion shall be or require during the Term; (the Casualty or Damage of Fire, which may burn down or destroy the said Messuage or Tenement and Premises, or any Part thereof, only excepted); and the said Messuage or Tenement and Premises, being so well and sufficiently repaired, upheld, supported, maintained, sustained, amended and kept, at the End of the said Term, or other sooner Determination of this present Demise, unto the said *W. B.* his Executors, Administrators and Assigns shall and will peaceably and quietly leave and yield up, (except as is before excepted) and shall and will then also

also leave to the said *W. B.* his Executors, &c. all such Goods as are mentioned in the said Schedule hereto annexed, the Use whereof is herein before granted as aforesaid; and all and every the Doors, Locks, Keys, Bolts, Latches, Hooks, Hinges, Wainscot, Cisterns, Pipes, Conduits, Dressers, Tables, Shelves, Hearths, Grates, Chimney-pieces, Sashes and Glass of and belonging to the said Premises, in good and sufficient Repair and Condition, reasonable Usage and Wearing thereof, and Damage by Fire, as aforesaid, excepted. *And further*, that it shall and may be lawful to and for the said *W. B.* his Executors, Administrators or Assigns, or any of them, with Workmen or others, or without, twice in every Year, during the Continuance of this Demise, at seasonable Times in the Day-time, to enter and come into and upon the said demised Premises, or any Part thereof, and view, search and see the State and Condition of the Reparations of the same; and of all Defects, Defaults, and Want of Repairs, then and there found, to give or leave Notice or Warning in Writing, at and upon the said demised Premises, to and for the said *F. D.* his Executors, &c. for the Repairing and Amending of the same within the Space of Three Months then next following: In which said Space or Time of three Months, after every or any such Notice or Warning, he the said *F. D.* for himself, his Executors, Administrators and Assigns, doth hereby covenant and grant to and with the said *W. B.* his Executors, Administrators and Assigns, well and sufficiently to repair and amend the Defects and Want of Reparations so to be found as aforesaid, (except as is before excepted); *And also* that he the said *F. D.* his Executors, Administrators and Assigns, shall and will at all Times hereafter, during the Term hereby demised, bear, pay and discharge

charge all Taxes, Charges, Impositions and Parish-Duties, which shall be taxed, charged, imposed or assessed upon the said Messuage or Tenement aforesaid, or any Part thereof, except the Land-Tax. And the said *W. B.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *F. D.* his Executors, Administrators and Assigns, that he the said *F. D.* his Executors, Administrators and Assigns, paying the said yearly Rent of thirty Pounds above reserved, in Manner aforesaid, and performing all and every the Covenants and Agreements herein before contained, which on his or their Parts and Behalves, are or ought to be paid, done and performed, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy the said Messuage or Tenement and Premises hereby demised, for and during the Term hereby granted, without any lawful Let, Suit, Trouble, or Interruption of or by the said *W. B.* his Executors, Administrators or Assigns, or any of them, or by any other Person or Persons lawfully claiming, or to claim by, from or under him, them, or any of them, or by or through his, their, or any of their Acts, Means or Procurement. *In Witness, &c.*

A Conveyance by Lease and Release of a House and Lands in Fee.

[Lease.] **T**HIS Indenture made, &c. between *T. A.* of, &c. of the one Part, and *G. L.* of, &c. of the other Part, *Witneseth* that the said *T. A.* for and in Consideration of the Sum of five Shillings of lawful *British* Money to him in Hand paid by the said *G. L.* the Receipt whereof is hereby acknowledged, he the said *T. A.* hath granted,

granted, bargained and sold, and by these Presents doth grant, bargain and sell unto the said *G. L.* All that Messuage or Tenement commonly called or known, &c. with the Rights, Members and Appurtenances thereof, situate, lying and being in, &c. in the County of, &c. And all Houses, Edifices, Buildings, Gardens, Orchards, Lands, Meadows, Commons, Pastures, Feedings, Trees, Woods, Under-woods, Ways, Paths, Waters, Water-courses, Easements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatsoever to the said Messuage or Tenement belonging, or in any wise appertaining, or which now are or formerly have been accepted, reputed, taken, known, used, occupied or enjoyed, to or with the same, or as Part, Parcel or Member thereof, or of any Part thereof; and the Reversion and Reversions, Remainder and Remainders, Rents, and Services of the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances: *To have and to hold* the said Messuage or Tenement, Lands, Hereditaments and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *G. L.* his Executors, Administrators and Assigns, from the Day of this Instant, &c. for and during and unto the full End and Term of one whole Year, from thence next and immediately ensuing and following, and fully to be compleat and ended; *Yielding and paying* therefore one Pepper-corn in and upon the Feast of *St. Michael* the Archangel, it demanded: *To the Intent* that by Virtue of these Presents, and by Force of the Statute for transferring of Uses into Possession, he the said *G. L.* may be in the actual Possession of all and singular the Premises above-mentioned, with the Appurtenances, and thereby be inabled to accept and take a

Grant and Release of the Reversion and Inheritance thereof, to him and his Heirs, to the only proper Use and Behoof of him the said G. L. his Heirs and Assigns for ever. *In Witness, &c.*

[Release.] *This Indenture made, &c. between T. A. of the one Part, and G. L. of the other Part, Witnesseth that the said T. A. for and in Consideration of the Sum of Six hundred Pounds of lawful Money of Great Britain to him in hand paid by the said G. L. the Receipt whereof the said T. A. doth hereby confess and acknowledge; and for divers other good Causes and Considerations him thereunto moving, he the said T. A. hath granted, bargained, sold, aliened, released and confirmed, and by these Presents doth fully, freely and absolutely grant, bargain, sell, alien, release and confirm unto the said G. L. (in his actual Possession now being, by Virtue of a Bargain and Sale to him thereof made for one Year, by Indenture bearing Date the Day next before the Day of the Date of these Presents, and by Force of the Statute for transferring of Uses into Possession) and to his Heirs and Assigns, All that Messuage or Tenement, &c. with the Rights, Members, and Appurtenances thereof, situate, lying and being in, &c. and all Houses, Edifices, Buildings, Gardens, Orchards, Lands, Meadows, Commons, Pastures, Feedings, Trees, Woods, Under-woods, Ways, Paths, Waters, Water-courses, Easements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatsoever to the said Messuage or Tenement belonging, or in any wise appertaining, or which now are, or formerly have been accepted, reputed, taken, known, used, occupied or enjoyed, to or with the same, or as Part, Parcel or Member thereof, or of any Part thereof; and also*

the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Premises above-mentioned, and of every Part and Parcel thereof with the Appurtenances; and also all the Estate, Right, Title, Interest, Claim and Demand whatsoever, as well in Equity as in Law, of him the said *T. A.* of, in and to all and singular the said Premises, and of, in and to every Part and Parcel thereof with the Appurtenances; and also all Deeds, Evidences and Writings, touching or concerning the said Premises only, or only any Part thereof, together with true Copies of all other Deeds, Evidences and Writings, which do concern the said Premises, or any Part thereof, jointly with any other Lands or Tenements, now in the Custody or Possession of him the said *T. A.* or which he can or may get or come by without Suit in Law; the said Copies to be made and written at the Request, Costs and Charges of the said *G. L.* his Heirs and Assigns: *To have and to hold* the said Messuage or Tenement, Lands, Hereditaments, and all and singular the Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *G. L.* his Heirs and Assigns, to the only proper Use and Behoof of the said *G. L.* his Heirs and Assigns for ever. *And* the said *T. A.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *G. L.* his Heirs and Assigns, that he the said *T. A.* now is the true, lawful and rightful Owner of the said Messuage, Lands, Tenements, Hereditaments and Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances; *And also* that he the said *T. A.* now is lawfully and rightfully seised in his own Right, of a good, sure, perfect, absolute and indefeasible Estate of Inheritance in Fee-simple, of and in all and singular the Premises

Premises above-mentioned, with the Appurtenances, without any Manner of Condition, Mortgage, Limitation of Use and Uses, or other Matter, Cause or Thing, to alter, change, charge, or determine the same; *And* that he the said *T. A.* hath good Right, full Power, and lawful Authority, in his own Right, to grant, bargain, sell and convey the said Messuage, Lands, Tenements, Hereditaments, and all and singular the Premises above-mentioned, with the Appurtenances, unto the said *G. L.* his Heirs and Assigns, to the only proper Use and Behoof of the said *G. L.* his Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents; *And also* that he the said *G. L.* his Heirs and Assigns, shall and may at all Times for ever hereafter, peaceably and quietly have, hold, occupy, possess and injoy all and singular the said Messuage, Lands, Tenements, Hereditaments and Premises above-mentioned, with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption, and Denial of him the said *T. A.* his Heirs or Assigns, and of all and every other Person or Persons whatsoever: *And* that freed and discharged, or otherwise well and sufficiently saved and kept harmless and indemnified of and from all former and other Bargains, Sales, Gifts, Grants, Leases, Mortgages, Jointures, Dowers, Uses, Wills, Entails, Fines, Post-Fines, Issues, Amerciaments, Seizures, Bonds, Writings Obligatory, Statutes Merchant and of the Staple, Recognizances, Extents, Judgments, Executions, Rents and Arrearages of Rent, and of and from all other Charges, Estates, Rights, Titles, Troubles, and Incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done or suffered, by the said *T. A.* his Heirs or Assigns, or any other Person or Persons

whatsoever, lawfully claiming, or to claim, by, from or under him, them, or any of them. *And further*, that he the said *T. A.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premisses above-mentioned, or any Part thereof, by, from or under him, them, or any of them, shall and will from Time to Time, and at all Times hereafter, upon the reasonable Request, and at the Costs and Charges of the said *G. L.* his Heirs or Assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Device and Devices, Conveyance and Conveyances in the Law whatsoever, for the further, better, and more perfect Granting, Conveying and Assuring of all and singular the said Premisses above-mentioned, with the Appurtenances, unto the said *G. L.* his Heirs and Assigns, to the only proper Use and Behoof of the said *G. L.* his Heirs and Assigns for ever, as by the said *G. L.* his Heirs or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised or advised and required. *And lastly* it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, That all and every Fine and Fines, Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances in the Law whatsoever already had, made, levied, suffered, executed and acknowledged, or at any Time hereafter to be had, made, levied, &c. by or between the said Parties to these Presents, or either of them, or by or between them, or either of them, and any other Person or Persons, of the said Premisses above-mentioned, with the Appurtenances, or any
Part

Part thereof, either alone by it self, or jointly with any other Lands, Tenements or Hereditaments, *shall be* and enure, and shall be adjudged, esteemed and taken to be and enure, as for and concerning all and singular the Premises above-mentioned, with the Appurtenances, to and for the only proper Use and Behoof of the said *G. L.* his Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, and to and for no other Use, Intent or Purpose whatsoever. *In Witness, &c.*

A Bargain and Sale of Lands to be inrolled.

THIS Indenture made, &c. between *N. D.* of, &c. of the one Part, and *H. J.* of, &c. of the other Part, *witnesseth* that the said *N. D.* for and in Consideration of the Sum of, &c. of lawful Money of *Great Britain* to him in Hand paid by the said *H. J.* the Receipt whereof the said *N. D.* doth hereby confess and acknowledge; he the said *N. D.* hath granted, bargained, and sold, aliened and confirmed, and by these Presents doth grant, bargain and sell, alien and confirm unto the said *H. J.* his Heirs and Assigns, *All* that Messuage or Tenement, situate, &c. and also all Lands, Trees, Woods, Under-woods, Tithes, Commons, Common of Pasture, Profits, Commodities, Advantages, Hereditaments, Ways, Waters and Appurtenances whatsoever to the said Messuage or Tenement, Lands and Premises above-mentioned belonging, or in any wise appertaining; and also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises, and of every Part and Parcel thereof; and all the Estate, Right, Title, Interest, Claim

and Demand whatsoever of him the said *N. D.* of, in, and to the said Messuage, Tenement and Premisses, and every Part thereof: *To have and to hold* the said Messuage or Tenement, and all and singular the said Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *H. J.* his Heirs and Assigns, to the only proper Use and Behoof of the said *H. J.* his Heirs and Assigns for ever. *And* the said *N. D.* for himself and his Heirs, the said Messuage or Tenement and Premisses, and every Part thereof, against him and his Heirs, and against all and every other Person and Persons whatsoever, to the said *H. J.* his Heirs and Assigns, shall and will warrant and for ever defend by these Presents. *In Witness, &c.*

Note; These Bargains and Sales of Inheritance and Freeholds, are to be inrolled in one of the Courts at *Westminster*, or in the County where the Lands lie, before the *Custos Rotulorum* and Justices of Peace, &c. within six Months after the Date of the Deeds: But Houses and Land in *London*, and any City, &c. are exempted out of the Statute of Inrollments. See Stat. 27 *H. 8. cap. 16.*

A Deed declaring the Uses of a Fine, intended to be levied.

THIS Indenture made, &c. between *W. B.* of, &c. and *M.* his Wife, of the one Part, and *L. T.* of, &c. of the other Part, *Witneseth* that for and in Consideration of the Sum of, &c. to the said *W. B.* and *M.* his Wife, or one of them, in Hand paid by the said *L. T.* at or before the Sealing and Delivery of these Presents, the Receipt whereof

whereof the said *W. B.* doth hereby acknowledge, and for divers other good Causes and Considerations, he the said *W. B.* hath covenanted and granted, and by these Presents, for himself and the said *M.* his Wife, his, their and either of their Heirs and Assigns, doth covenant and grant to and with the said *L. T.* his Heirs and Assigns, That he the said *W. B.* and *M.* his Wife, shall and will before the End of *Michaelmas*-Term next ensuing the Date of these Presents, in due Form of Law, acknowledge and levy before the King's Majesty's Justices of his Court of *Common Pleas* at *Westminster*, unto the said *L. T.* and his Heirs, one Fine *Sur Cognizance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of *All* that Messuage or Tenement with the Appurtenances, situate, lying and being, &c. and also of all those Pieces or Parcels of Land, lying, &c. and containing by Estimation, &c. with all and singular the Appurtenances, all which said Premises are now in the Tenure of, &c. And of the Reversion and Reversions, Rents, Issues and Profits of the said Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances; by such Name and Names, Quantity and Number of Messuages, Acres and Things, and in such Manner and Form, as by the said *L. T.* his Heirs or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised or advised and required. And it is hereby declared and agreed by and between all and every the said Parties to these Presents, that the said Fine so to be had and levied in Manner as aforesaid, and all and every other Fine and Fines already had, or hereafter to be had, levied, sued or prosecuted of the said Premises, or any Part thereof, by it self, or jointly

with any other Lands or Tenements, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person or Persons, as for and concerning all and singular the said Premisses above-mentioned, with the Appurtenances, *shall* be and enure, and shall be adjudged, deemed and taken to be and enure, to the only proper Use and Behoof of the said *L. T.* his Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever. *In Witness, &c.*

*An Indenture or Chirograph of a Fine
levied in Court of a Messuage, &c.*

THIS is the final Agreement made in the Court of our Sovereign Lord the King at *Westminster*, from the Day of the Holy Trinity in three Weeks, in the Thirteenth Year of the Reign of *George the Second*, by the Grace of God of *Great Britain, France and Ireland King, Defender of the Faith, &c.* before *John Willes, Alexander Denton, John Fortescue Aland, and William Fortescue*, Justices of our Lord the King, and others then and there present, between *Laurence T.* Plaintiff, and *Thomas B. and Mary* his Wife, Defendant, of one Messuage, with the Appurtenances in *S.* Whereupon a Plea of Covenant was summoned between them in the same Court, that is to say, that the aforesaid *Thomas* and *Mary* have acknowledged the aforesaid Messuage, with the Appurtenances, to be the Right of him the said *Laurence*, as that which the said *Laurence* hath of the Gift of the aforesaid *Thomas* and *Mary*; and that they have demised and quit-claimed from them the said *Thomas* and *Mary*, and their Heirs,
to

to the aforesaid *Laurence* and his Heirs for ever : And moreover the said *Thomas* and *Mary* have granted for them and the Heirs of the said *Mary*, that they will warrant to the aforesaid *Laurence* and his Heirs, the aforesaid Messuage, with the Appurtenances, against the said *Thomas* and *Mary*, and the Heirs of the said *Mary* for ever. And for this Acknowledgment, Remise, Quit-claim, Warranty, Fine and Agreement, the said *Laurence* hath given to the aforesaid *Thomas* and *Mary* sixty Pounds Sterling.

Indorsed on the Back of one Part; *Delivered by Proclamation according to the Form of the Statute.*

A Deed of Gift of a Capital Messuage and Lands, from Father to Son.

THIS Indenture made, &c. between *J. M.* of, &c. Esq; of the one Part, and *A. M.* Son and Heir of the said *L. M.* of the other Part, *Witneseth* that the said *J. M.* for and in Consideration of the natural Love and Affection which he hath and beareth unto the said *A. M.* and for divers other good Causes and Considerations him thereunto especially moving, *Hath* given, granted, aliened, enfeoffed and confirmed, and by these Presents doth give, grant, alien, enfeoff and confirm, unto the said *A. M.* his Heirs and Assigns, *All* that capital Messuage, or Dwelling-house, with the Stable, Barn, Orchard, and several Closes of Meadow and Pasture Ground thereunto adjoining and belonging, commonly called or known by the Name of, &c. lying and being in, &c. and now or late in the Tenure or Occupation of, &c. his Under-Tenants

Tenants or Assigns ; and also all Out-houses, Edifices, Buildings, Courts, Yards, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Trees, Woods, Underwoods, Commons, Common of Pasture, Ways, Paths, Passages, Waters, Water-courses, Easements, Profits, Commodities, Privileges, Advantages, Hereditaments and Appurtenances whatsoever, to the said Capital Messuage, Closes, Lands, Tenements, Hereditaments and Premises above-mentioned, or to any Part or Parcel thereof belonging, or in any wise appertaining, or therewith commonly held, used, occupied or enjoyed, or accepted, reputed, taken or known as Part or Parcel of, or belonging to the same ; and the Reversion and Reversions, Remainder and Remainders, Rents, Services, Issues and Profits of all and singular the said Premises, with the Appurtenances ; and all the Estate, Right, Title, Interest, Property, Benefit, Claim and Demand whatsoever of him the said *J. M.* of, in and to the same Premises, and of, in and to every Part and Parcel thereof, with their and every of their Appurtenances ; and all Deeds, Evidences and Writings touching and concerning the said Premises only, or any Part thereof, now in the Hands, Custody or Possession of the said *J. M.* or which he may get or come by, without Suit in Law ; together with true Copies of all other Deeds, Evidences and Writings concerning the said Premises, or any Part thereof, amongst other Lands ; the same Copies to be made and written at the Costs and Charges of the said *A. M.* his Heirs or Assigns : *To have and to hold* the said Capital Messuage, Lands, Tenements, Hereditaments and Premises above-mentioned to be granted and conveyed, with their and every of their Appurtenances, unto the said *A. M.* his Heirs and Assigns, to the only proper Use and Behoof of him
the

the said *A. M.* his Heirs and Assigns for ever. And the said *J. M.* for himself, his Heirs, Executors and Administrators, doth covenant, promise and grant to and with the said *A. M.* his Heirs and Assigns, by these Presents, that he the said *A. M.* his Heirs and Assigns, shall and lawfully may from Time to Time, and at all Times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said Capital Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premisses hereby granted and conveyed, or mentioned or intended to be hereby granted and conveyed, with their and every of their Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said *J. M.* his Heirs, Executors or Administrators, and of all and every other Person or Persons whatsoever, free and clear, and fully discharged, or well and sufficiently saved, and kept harmless and indemnified, of, from and against all former and other Gifts, Grants, Bargains, Sales, Feoffments, Leases, Dowers, Jointures, Uses, Estates, Intails, Rents, Rent-Charges, Arrearages of Rents, Bonds, Annuities, Writings Obligatory, Statutes Merchant and of the Staple, Recognizances, Extents, Judgments, Executions, and of and from all other Titles, Troubles, Charges and Incumbrances whatsoever, had, made, done or suffered, or to be had, made, done or suffered by him the said *J. M.* his Heirs, Executors or Administrators, or any other Person or Persons whatsoever, lawfully claiming or to claim, by, from or under him, them, or any or either of them. *In Witness, &c.*

N. B. Livery and Seisin must be delivered on this Deed of Gift and Grant.

A Will with Devise of Lands and Tenements in Fee-simple, Fee-tail, for Life and Years, being Freehold, Leasehold and Copyhold, with Variety of Legacies to younger Children, &c.

IN the Name of God, *Amen*: I *B. T.* of the Parish of, &c. in the County, &c. Gentleman, being weak in Body, but of sound and perfect Mind and Memory, blessed be Almighty God for the same, do make and publish this my last Will and Testament, in Manner and Form following, (that is to say) *First*, I give and devise to my eldest Son *E. T.* all that my Messuage or Tenement, with the Appurtenances, situate, &c. wherein I now live; To hold to him the said *E. T.* his Heirs and Assigns for ever. *I also* give and devise to my dear Wife *A. T.* all that my Messuage or Tenement, situate, lying and being in, &c. together with all Ways, Passages, Easements, Profits, Commodities and Appurtenances thereunto belonging; To have and to hold unto her my said Wife *A.* and her Assigns, for and during the Term of her natural Life, she keeping the same in good and sufficient repair; and immediately from and after her Decease, I give and devise the said Messuage or Tenement and Premises, with the Appurtenances, unto my said eldest Son *E. T.* and his Heirs and Assigns for ever. *I also* give and devise to my said Wife *A. T.* all my Freehold Lands in the Parish of, &c. now in the Possession of, &c. To hold to her during her natural Life, she making no Waste or Destruction thereupon; and from and after her Decease, I give and devise

wise the same to my said Son *E. T.* for the Term of his natural Life; and after his Decease, I devise the same to my Daughter *M. T.* during her natural Life; and after the Determination of that Estate, I give and devise the same to my loving Brother *N. T.* of, &c. and *G. H.* of, &c. and their Heirs, during the Life of my said Daughter *M.* to the Intent to preserve and support the contingent Uses and Remainders herein after limited; but nevertheless *in Trust*, to permit my said Daughter *M.* to receive the Rents and Profits thereof during her Life; and from and after the Decease of my said Daughter *M.* then to remain to the first Son of my said Daughter *M.* and the Heirs of the Body of such first Son lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the second, third, fourth, fifth, and all and every other Son and Sons of my said Daughter *M.* begotten, the Elder of such Son and Sons, and the Heirs of his Body issuing, to be always preferred, and to take before the Younger of such Sons and the Heirs of his Body; and for Default of such Issue, then I give the same to my Son *W. T.* for and during the Term of his natural Life; and after his Decease, to remain to his Issue in Tail, in such Manner as I have limited the same to my Daughter *M.* and for Default of such Issue, then to remain to my Son *S. T.* and the Heirs Male of his Body begotten, &c. and for Default of such Issue, to remain to my own right Heirs for ever. *I also* give and devise all those my Copyhold Lands and Tenements, situate and lying, &c. and now in the Possession of, &c. (which I have already surrendered to the Use of my last Will and Testament) unto my said Son *W. T.* and his Heirs and Assigns for ever. *I also* give all that my Messuage or Tenement, with the Appurtenances,

nances, lying and being in, &c. to my said Son S. T. To hold to him during his Life ; and from and after his Decease, I give the same to my said Daughter M. T. during the Remainder of my Estate and Interest therein. *I also* give and bequeath to my said Brother N. T. and G. H. all that my Leasehold Estate, situate in, &c. to hold to them the said N. T. and G. H. their Executors, Administrators and Assigns, from and immediately after my Decease, for and during the Rest and Residue then to come and unexpired of the Term to me granted therein ; *upon this Trust* and Confidence, that they the said N. T. and G. H. and the Survivor of them, and the Executors and Administrators of such Survivor, do and shall permit and suffer my said Daughter M. T. to have, hold and enjoy all my said Leasehold Estate to them given as aforesaid, and to receive and take to her own Use and Behoof the Rents, Issues and Profits thereof, for and during so much, or so many Years of the Term granted to me therein, as shall run out and expire in the Life-time of her my said Daughter M. And after her Decease, upon this further Trust and Confidence, that they the said N. T. and G. H. and the Survivor of them, and the Executors and Administrators of such Survivor, do and shall out of the Rents, Issues and Profits arising from my said Leasehold Estate, well and truly pay, or cause to be paid unto my Daughter C. T. or her Assigns, for and during so much of the said Term to me therein granted, as shall run out and expire in the Life-time of her my said Daughter, the yearly Annuity or Sum of, &c. at the two most usual Feasts in the Year, &c. by even and equal Portions ; the first Payment thereof to be made at such of the said Feasts, which shall first
and

and next happen after the Decease of my said Daughter *M.* And upon this further Trust and Confidence, that they the said *N. T.* and *G. H.* and the Survivor of them, &c. do and shall permit and suffer my said Son *S. T.* his Executors, Administrators and Assigns, to have, hold and enjoy all such my said Leasehold Estate, (charged with the said Annuity of, &c. to my said Daughter *C.*) and to receive and take the Overplus of the Rents, Issues and Profits thereof, to his and their own proper Use and Benefit, from and immediately after the Decease of her my said Daughter *M. T.* for and during all the Rest, Residue and Remainder of the Term to me therein granted, which shall be then to come and unexpired. *I* also give and bequeath unto my said Daughter *C. T.* and my three younger Daughters *D. T.* *H. T.* and *F. T.* the Sum of five Hundred Pounds a-piece, to be paid to them by my Wife and Executrix herein after named at their several and respective Ages of one and Twenty Years, or Days of Marriage, which shall first happen; but in Case any of them my said younger Children, shall happen to die before she or they shall attain the said Age of one and Twenty Years, or Day of Marriage, then my Will is that the said Legacy of five Hundred Pounds so given to her or them so dying shall not be paid at all, but that the Benefit thereof shall accrue and be unto my said Executrix: And my Will and Meaning is, that my said Wife and Executrix shall out of the Product and Proceed of my Personal Estate, maintain and provide for them my said younger Children, till their said respective Legacies shall become due and payable, without making any Deduction therefore out of the same. And my Will and Meaning further is, that in Case my said Wife and Executrix shall

shall hereafter marry again, that then my said Wife shall forthwith upon such her Marriage give unto the aforesaid *N. T.* and *G. H.* good and sufficient Security for performing of this Part of my Will, and the true Payment of the said several Legacies to my said younger Daughters in Manner and at the Times above limited for Payment thereof; and I do hereby desire the said *N. T.* and *G. H.* to take such Security accordingly, and what Charges or Trouble they, or either of them, shall be put to in compelling my said Executrix to give the said Security, (in Case there shall be any therein) my Will is shall be fully satisfied and answered unto them out of the Residue of my Estate herein after given to her my said Executrix. *I also* give to my said Wife *A. T.* during her Life, the Use of all my Plate and Household Stuff; and after her Death, the same to remain to my said Daughter *M. T.* and for Prevention of any Imbezilment of the said Plate and Household Goods, it is my Will, and I do hereby direct, that a particular Inventory be taken by my said Wife and the said *N. T.* and *G. H.* of all my said Plate and Household Goods, and that she give her Covenant to them the said *N. T.* and *G. H.* to leave the same to my said Daughter *M.* to whom I have hereby given the same, (their reasonable Usage and Wearing in the mean Time excepted.) *I also* give to my Cousin *R. S.* of, &c. the Sum of one Hundred Pounds. *I also* give to my Friends *T. W.* *G. W.* and *L. M.* fifty Pounds a-piece: And also to, &c. the Sum of, &c. which said several Legacies or Sums of Money, I will and order shall be paid to the respective Legatees, within six Months after my Decease. I further give to, &c. ten Guineas a-piece to buy them Mourning. *Also* I give to my Servant-Man and two Servant-Maids, that shall be living with me

at the Time of my Decease, twenty Pounds a-piece. *I also* give to the Poor of the Parish where I shall die, the Sum of thirty Pounds; and to the Parson of the same Parish two Guineas, to preach a funeral Sermon on my Death; the said last mentioned Legacies to be paid at my Decease. *Also*, all the Rest and Residue of my Goods, Chattels and Personal Estate whatsoever, after my just Debts and Legacies aforesaid are paid, I give and bequeath the same Estate to my said Wife *A. T.* and I make and appoint her my said Wife sole Executrix of this my Will, and the said *N. T.* and *G. H.* Overseers thereof, to take Care and see the same performed in all Things, according to my true Intent and Meaning; and for their Pains therein, I give to each of them the Sum of, &c. *And Lastly*, I do hereby revoke all former and other Will or Wills by me made, and declare this only to be my last Will and Testament. *In Witness* whereof I the said *B. T.* have hereunto set my Hand and Seal the Day of, &c. in the Year of the Reign, &c. and in the Year of our Lord, &c.

B. T.

Signed, sealed, published and declared by the Testator *B. T.* as and for his last Will and Testament, in the Presence of us, who have subscribed our Names as Witnesses hereunto, in the Presence and at the Request of the said Testator.

W. L.

J. D.

T. E.

All *Wills* of Lands, &c. the better to guard against Fraud and Perjury, and unjust Impositions, are to be made in Writing, and signed by the Devisor, in the Presence of three credible Witnesses: But on any Alteration of a Will, there may be a *Codicil* annexed; which being taken as Part of the Will, and generally proved with it, need not be attested by three Witnesses; tho' sometimes by way of Caution, it is executed in the same Manner as the Will.

THE T A B L E.

A.

A Cceptance of Rent, affirms a Lease to be good,
after a Condition broken. Page 200

— Difference between Lease for Life and Years,
and on a collateral Condition. *ibid.*

— Accepting another Lease tho' for shorter
Term, a Surrender in Law of the first Lease.

201

— By accepting last Rent due, all Arrears
presumed satisfied. *ibid.*

Assets, what Lands, &c. are by Discent. 50

— In Fee-simple, and a Trust in Land. *ibid.*

— How far the Heir is bound thereby. *ibid.*

Assignment of Leases. 201

— A Lessor once receiving Rent of Assignee,
may not afterwards have Action of Debt against
Lessee. *ibid.*

— But Lessor may refuse the Assignee, and
both him and Lessee originally liable. 202

The T A B L E.

- Where Notice of the Assignment is necessary, and where not. Page 202, 203
- Admitting one Assignee, admits all others. 203
- Assigns where may take Advantage of Covenants, how far bound, &c. 228

C.

- Common*, what it is. 239
- The several Kinds of, Difference between Common Appurtenant belonging to an Estate and Appendant. 240, 241
- Where may be on Condition, and for all the Year, or a certain Time, &c. 242
- Commoners not to use Common, but with their own Cattle. 243
- May bring Action and Writ of Admeasurement, where Common is surcharged. 244
- The Lord may approve against his Tenants, or inclose Part of the Waste, &c. leaving Common sufficient. 246
- By-Laws for regulating of Commons. 247
- Commons to be driven yearly of Beasts, Horses sold in Markets, &c. 248, 249
- Copyhold* Tenant, who is, and his Estate. 299
- Copyholders formerly Tenants at Will only, but now are on surer Foundation by Custom. 300
- If turned out of their Estates, &c. Remedy against the Lord. 300, 301
- Their Plaints in the Lord's Court. 302
- The large Power of the Lord in making Grants of Copyhold Estates. 302, 303
- And what Lands, &c. may be granted by Copy of Court-Roll. 303
- Rents 303

The T A B L E.

- Rents and Services Customary reserved on Grants, Estates good or not. Page 304
- A Copyholder may not alien by Deed to a Stranger, without Surrender and Admittance, but may Release a Right. 305, 306
- Admittances to *Copyholds* Sorts of, by the Lord, on Grants, Surrenders and Discents. 306
- If contrary to Custom, or the Surrender, they are not binding. 307
- An Heir is Tenant to most Intents, before Admittance, but not coming in to be admitted in Time, may forfeit his Estate, &c. 308, 309
- A Grantee or Surrendree has no Interest till he is admitted Tenant. 310
- Every Admittance may be pleaded as a Grant, and Admittance of Copyholder for Life is that of him in Remainder, of a Widow to her Estate, &c. 311
- But Admittance of a Surrendree bars the Widow. 312
- What Acts of the Lord amount to an Admittance in Law. 313
- Surrenders of *Copyhold* Estates into the Hands of the Lord. 314
- Where made out of Court to the Steward, Bailiff, or two customary Tenants, and Presentment of. 315
- To Trusts and Uses, how construed, must take Effect immediately. 316, 317
- In what Case a first Life may surrender all the Lands by Custom. 318
- Of Surrenders to Use of Wills, and their Construction. 319
- Where Equity will supply the want of a Surrender, in Favour of younger Children, and Creditors, &c. 320

The TABLE.

- The Surrenders by way of Mortgage, if not presented are void, but a Surrender has been supplied in such Case. Page 321
- If two such Surrenders, and the second first presented, that is good. 322
- An old Surrender taken up and new one made, on continuing Mortgage Money. 323
- Upon Surrenders and Renewals, Fines paid to the Lord, to be reasonable. *ibid.*
- Forfeitures of Copyhold Lands, the Acts of the Tenants that cause it, denying to pay Fines, Refusal to perform Services, cutting down Timber, making Leases for more than a Year, &c. 324, 325
- Where Relief given in Chancery against a Forfeiture. *ibid.*
- Escheats of Copyholds, and Seizure by the Lord. 326
- When a Copyhold is extinguished, on granting it by Deed. 327
- By Custom Copyhold Estates may be inrailed, and Recovery suffered in the Court of the Manor. *ibid.*
- What particular Statutes extend to Copyhold Estates, and what not. 328
- They have no collateral Qualities not concerning the Discent, as to be Afters, &c. *ibid.*
- But there may be Dower, of such Estates, &c. by special Custom. 329
- A Grant of a Copyhold, Surrender, Grant of a Reversion, Surrender and new Grant, Admittance in Fee, Surrender upon Condition, to Uses in Consideration of Marriage, to the Use of a last Will and Testament, &c. 330 to 349
- Covenants in Leases, &c. for what made and enter'd into. 224

—— Where

The TABLE.

- Where the Law intends a Covenant, and how far it shall extend. Page 224
- Reservation of Rent is a Covenant in Law. *ibid.*
- The Covenants to repair how construed, where Part of Rent may be expended by the Tenant therein. 225
- Lessor first to make good the Reparations, before Lessee obliged. *ibid.*
- On an express Covenant Assigns may maintain an Action, how the Action brought. 226
- Where Covenants are broken, Breaches assign'd, and what is a Breach. 227
- Persons bound by Covenants, as Heirs, Executors, &c. *ibid.*
- What is a good Performance of a Covenant, where the Tenant must repair, tho' the House be burnt. 228
- Curtesy of England* Tenant by, of a Wife's Land. 152
- The Husband may be in some Cases, where a Woman shall not be endowed. *ibid.*
- But there must be Issue born, which might inherit the Estate. 153
- If such Issue dies, yet the Husband shall be Tenant by the *Curtesy*. *ibid.*
- So of an Estate-tail determined, and not defeated. 154
- And if he has Issue, which die before the Lands descend to the Wife, it is the same. 155
- If the Husband makes a Feoffment in Fee, his Tenancy is extinct. 156
- Where a Wife is attainted of Felony, the Husband having Issue before, shall be Tenant by the *Curtesy*, not after. 156, 157

The T A B L E.

—— In Case the Wife's only Tenant for Life,
tho' the Estate is to her Issue, &c. the Husband
is no Tenant by Curtesy. Page 157

D.

- Demand* of Rent, how made, at what Time and
Place, on the Lands, &c. 217
- When to be on the very Day of Payment,
and where may be after it. 218
- Necessary to make an Entry, but need not
be Personal, unless after the Day. 219
- Not required on an absolute Covenant to
pay the Rent, without the Words being lawfully
demanded. *ibid.*
- Devise* of Lands by Statute. 49
- What Persons may give and charge Lands.
ibid.
- A Devise to one and his Assigns for ever,
or to him and his, or that such a Person shall be
universal Heir, &c. conveys a Fee. 55
- Of Estates and Interests devised by Will,
and how construed in Equity. 56, 57
- Difference between a Devise of all a Man's
Estate, and all his Lands, and other particular
Estates. 57, 86, &c.
- Discent*, the Definition of. 58
- In Discents next of the worthiest Blood
to the Ancestor to inherit. 59
- The whole Blood only, both of the same
Father and Mother, and not half Blood. *ibid.*
- Entry of a Brother, where it may make the
Brother of the half Blood inherit by Discent.
60, 61
- Discent Lineal* from Father to Son, and *Collateral*
to Brothers, &c. 61
- To

The T A B L E.

—— To the next Cousin of the whole Blood.	Page 61
—— An Uncle before a Father, after whom to the Father.	62
—— In Case of a Purchase, Lands shall go to Heirs on the Part of the Father, or Mother, or shall Escheat.	63
—— Lands descending from Part of the Father, Heirs of Part of the Mother not to inherit, &c.	64
Discent among Brethren, is to the elder Brother.	65
—— No Notice shall be here taken of Disability of the Father to impede the Discent.	66
—— Lineal Blood, not the Collateral between Brethren, corrupted by Attainder.	67
—— In the right Line of Discents, Children inherit their Ancestors, but not they to them.	68
—— And how Lands generally descend, first to the eldest Son and his Issue, and for want of Sons to Daughters equally, &c.	69
—— Then to Brothers, Uncles and Aunts, Cousins next of Kin.	ibid.
Discent of Fee-tail Estates by Statute.	ibid.
Discent by Custom, to all the Sons, &c.	69, 70
—— The Difference between Discent of Lands, and where one takes by Purchase, in the latter Case a Fine is no Bar, &c.	71
—— A Person is in by Discent, before a Devise.	ibid.
Disseisins of Lands, by unlawfully entering thereon.	223
—— Of Rents, on Rescous of a Distress, Denial of the Rent, &c.	ibid.
—— Where it is a Disseisin at Election, or otherwise.	ibid.
Distress, for Rent behind, &c.	251
—— The	

The TABLE.

—— The End or Effect of it, where may not be had, Damages if wrongful.	Page 252, 253
—— Of what particular Things a Distress may be taken, and what not.	253, 254
—— Goods of a Carrier privileged from Distress, so Goods in an Inn, &c.	254, 255
—— But another's Goods in the Tenant's House, &c. and Beasts of a Stranger on his Lands may be distrained.	255
—— Things in Custody of the Law are not distrainable.	256
—— A Distress may not be taken on a Sunday, or for Rent in the Night, &c.	257
—— Cattle and Goods distrained how impounded, and took Care of, not to be used.	258, 259
—— Distresses shall not be excessive, and in what Cases Persons may distrain, but not sell Goods.	260, 261
—— How Distresses are to be taken, Goods appraised and sold, &c. by the Statute 2 W. & M.	262
—— Where Goods fraudulently carried away, &c. by Stat. 8 Ann.	263
—— The late Act 11 Geo. 2. relating to Distresses, Cattle on Commons, Corn and Grass, &c. on the Ground distrainable, where Doors may be broken open to seize Goods, Distrainers not Trespassers for Irregularity, &c.	264, 266, 267
A Warrant to distrain, Inventory, and Appraisement of the Goods, Notice to the Tenant, and Oath of the Appraisers.	268, 269, 271
Dower, what it is.	126
—— The divers Kinds of, and Things necessary to intitle it, if Husband's Lands aliened, Wife shall have Dower.	127
—— Of	

The TABLE.

Of what Lands and Tenements, &c. the Wife shall be endowed.	Page 128, 129
How assign'd by the Sheriff, on the King's Writ, or by the Heir, &c. being a third Part of all the Land of the Husband.	130
When done by Metes and Bounds most beneficial.	131
But the Widow's Acceptance shall bind her.	132
Intervening Estate for Years will not obstruct Dower, but for Life will.	133
Though Land be immediately regranted by a Bargainee, his Wife shall be endowed	134
Where a Mother and Grandmother endowed by an Heir.	<i>ibid.</i>
If Things are intire, and not to be divided, Dower assigned in a special Manner.	135
The Wife not to be endowed of a Trust Estate, or a Use not executed.	136
When Lands, &c. given by a Will in Lieu of Dower, a Wife cannot have both.	137
In what Cases the Wife may waive a Jointure and claim her Dower.	138
The Privileges of it, and who may be endowed.	138, 139
Extraordinary Case of Dower, where the Husband was hanged for Felony.	139
A Wife committing Treason or Felony, forfeits Dower.	<i>ibid.</i>
Divorced for Adultery, or if she elope from her Husband, &c. she loses it.	140
What Acts extinguish and bar Dower, levying a Fine with the Husband, Release, &c.	141
Manner of Proceeding on the Writ of Dower.	142

The T A B L E.

E.

<i>Ejectment</i> , Writ or Action of.	Page 287
—— To recover Lands of which a Man is ejected.	<i>ibid.</i>
—— The Method of prosecuting it, Declaration served on the Tenant in Possession, Lease, Entry and Ouster confessed, &c.	288, 289
—— No Arrest is made therein, and if Judgment be against the Plaintiff, he may commence another Action.	291
—— If Plaintiff recovers, to have Action of Trespass for mesne Profits of the Lands.	<i>ibid.</i>
—— Where no Tenant in Possession, the Process to be in the old way.	292
—— When Half a Year's Rent is due from Tenants and no Distress, Landlords to bring Ejectment for the Land.	293
—— But Tenants may be relieved on a Bill in Equity by Statute 4 Geo. 2.	294
—— A Tenant to whom Declaration in Ejectment is delivered, to give Notice to his Landlord, under Penalties.	<i>ibid.</i>
—— And the Landlord to be made Defendant with the Tenant, &c. by 11 Geo. 2.	295
A Declaration, Notice thereof, and Lease in Ejectment.	295, 297
<i>Entry</i> , by an Heir on Lands descended.	70
—— The Issue or Heirs of the eldest Son, may make an Entry on the younger Son.	<i>ibid.</i>
—— Tho' not if the Land be convey'd away, or the youngest Son dies seised.	<i>ibid.</i>
—— What Discents take away or toll an Entry, and put him that has Right to an Action.	<i>ibid.</i>
<i>Estate</i> , what it signifies.	56
—— It	

The TABLE.

- It includes all Things Real and Personal,
Lands, Rents, &c. Page 56
- Where shall be a Fee-simple Estate, and
where not in a Devise. 57
- If coupled with Chattels it carries no Fee. 58

F.

- Fee-simple* Estate defined. 42
- What Words make the Estate of Inheri-
tance. 42, 43, 46
- Absolute, Conditional, and Qualified, and
of a base Fee, with their several Differences. 43, 44
- No Remainder can depend upon an absolute
Fee-simple, but may on others. *ibid.*
- Where a limited Fee-simple, on a Fee de-
terminable. 45
- Consideration in a Deed when it may di-
rect a Fee, where the Interest passes by that
only. *ibid.*
- Demesne as of Fee, how construed. 47
- Who shall be Heirs to Fee-simple Estates. 47, 48, 50
- Fee-simple Lands charged by Ancestors, by
Bonds, Warranties, &c. 50, 51
- What will be an Estate in Fee, and what
in Tail, or for Life only, and a Fee-simple ex-
pectant. 52
- Of Fee-simple Estates granted to Bodies
Politick, and their Successors. 53
- In what Cases a Fee will pass by general
Words, as on levying a Fine, a Release from
one Jointenant to another, &c. 54, 55
- Fine*, to bar an Intail. 97

—— How

The T A B L E.

———— How it operates on a Marriage Settlement.	Page 91
———— Destroys particular Estates and Remainders, &c.	102
———— Bars the Tenant in Tail and all his Issue.	103
———— Where it will Bar Dower of a Woman.	141
<i>Freehold</i> , Definition of the Word, and several Sorts of, in Deed and in Law, &c.	1
Freeholders who are by Law.	2
———— Persons not to be disseised of their Free- holds, &c.	<i>ibid.</i>
———— How a Freehold shall be pleaded.	<i>ibid.</i>
———— Livery why made of Freehold Estates.	3
———— Of their Commencement, not to be in <i>futuro</i> .	4
———— What is Parcel of the Freehold, as Wainscot, Windows, Doors, a Furnace, &c.	5
———— Particu'ar Things fixed thereto by Tenants removable, and not so.	6
———— Where 'tis Felony to take them away by a late Statute.	7
The Qualification of <i>Freeholders</i> to be Members of <i>Parliament</i> and Electors, and Laws concerning Elections, Duty of Sheriffs, &c. therein.	7, 10, &c.
———— Their Qualification to be <i>Justices of Peace</i> , and general Authority of Justices.	18, 20
———— To serve on <i>Juries</i> , the Power of Jury- men in giving Verdicts, and how punished for a false Verdict, &c.	23, 25, 30
———— Freeholders qualified to kill <i>Game</i> , with the general Laws and Statutes relating to the Game.	33, 34, &c.

The TABLE.

—— To erect Pigeon-Houses or *Dovecotes*, and the Statutes against killing Pigeons. Page 39, 40

H.

- Heirs*, Lineal and Collateral. 47
- Persons that may not be Heirs, as a Bastard, Alien, one attainted of Treason, &c. 48
- Heir by Right of *Representation*, on Death of a Father, in Grandfather's Life-time. *ibid.*
- A Daughter to have Land till Son born, who is Heir. 49
- The Heir to have Writ of *Ventre inspicundo*, where a Wife marries again, and pretends to be with Child by her former Husband. *ibid.*
- None can be Heir of Goods except Heir-Looms. *ibid.*
- An Heir not bound by his Ancestor's Bond, where not named, nor then without Assets. 50
- A collateral Heir chargeable for Debt of the Ancestor. *ibid.*
- Word *Heirs* includes Assigns in Grants, and extends to all Heirs most remote, Heirs of Heirs, &c. *ibid.*
- Necessary to convey an Inheritance, Difference between Heir and Heirs, in granting Lands. 51

I.

Inheritance, what it is, Land by Discent or Purchase. 46

—— A

The TABLE.

- A Person may have it by Creation, as a Baron created to him and his Heirs. Page 46
- Estate of Inheritance limited. *ibid.*
- Jointenants*, why so called, and their Benefit of Survivorship. 166
- What Estates granted to Persons make a Jointenancy. 167
- Where may be Jointenants for Life, Tenants in Common of an Estate-tail, and Jointenants in Fee-simple. *ibid.*
- A Devise to two jointly and severally, is a Jointenancy. 168
- Leases made by Jointenants, how construed. 169
- A Release to one joint Feoffee, enures to all his Companions; but if one Grant a Rent-charge, &c. the Survivor shall hold the Lands discharged. 170
- Land of a Jointenant in Fee, may not be extended in the Survivor's Hands. 171
- Devise of Lands whereof one is jointly seised is void, and why. 173
- Alienation severs the Jointenancy, and then Jointenants become Tenants in Common. 173, 174
- Jointenants to make Partition, what Writs they shall have, &c. 176
- One may not bring Trespass or Trover against another, but one may take a Distress, receive the whole Profits, &c. 177
- And one Jointenant may have Action of Account against the others. *ibid.*
- Jointure* of Lands settled on a Wife. 143
- What Things requisite to the making of a Jointure. 144
- To be in Satisfaction of Dower, &c. *ibid.*

The TABLE.

- It must be for the Wife's own Life, or a greater Estate. Page 144
- If not made according to the Statute, is no Bar to her Claim of Dower, but a Jointure at Common Law. 145
- Where the Wife may have a Provision which is no Jointure, and likewise her Dower. 146
- As not being the Gift of the Husband, or where the Inheritance is not reserved to him and his Heirs. 147, 148
- Where Equity will make good a Jointure, and compel the Execution of Articles. 148, 149
- Upon Eviction of a Jointure, the Wife shall be endowed. 150
- In what Cases the Wife forfeits her Jointure, by Alienation, committing Treason or Felony, &c. ibid.

L.

- Lease, made of what Land or other Thing. 188
- Several Things necessary therein, where Articles, a Covenant, or Licence construed a Lease. ibid.
- To contain Certainty in Commencement, Continuance, and the End. 189
- The Dates of Leases how taken, if impossible, &c. to begin from Delivery. 191
- When naught for Uncertainty. 192
- What Persons may make Leases, Persons seised in Fee-simple, Tail, for Life, &c. ibid.
- The Terms granted, where for Years, Months, &c. or from Year to Year. 193

E e

—— How

The TABLE.

How construed, and for what Estates binding.	Page 194, 195
If Lessee enters before his Term begins, 'tis a Disseisin.	198
Leases commencing after the Lessor's Death where good.	199
A voidable Lease may be affirmed by accepting the Rent.	200
And such Lease is made void, by the Lessor's Re-entry.	201
Where void on deserting the Premises, if no Distress.	207, 249
Leases of Farms, Sheep and Cattle kept thereon, &c.	250
Livery and Seisin, what and where required on Leases for Life, &c.	182
The Manner of doing it, of Houses and Lands	<i>ibid.</i>
No Body to be on the Premises but the Parties, and after made Lessee enters, &c.	<i>ibid.</i>

M.

Marriage Settlements, how made of the Husband's Estate.	151
Various Ways of making them.	<i>ibid.</i>
The Chancery may decree a Settlement to be made of the Wife's Lands.	<i>ibid.</i>
Bonds before Marriage good, and Promises of Marriage.	152
What other Things the Wife shall have after the Death of the Husband.	<i>ibid.</i>

N.

The TABLE.

N.

Nuisances to a Man's House, Water, Way, Light or Air. Page 234

— In what particular Cases they may be, and Actions and Remedies therefore. 234, 235

— May be abated or removed by Persons prejudiced by them. 236

— Cottages with Inmates, Nuisances, &c. 238

P.

Parceners, who are, Daughters or Sisters, &c. of Persons dying seised in Fee. 72

— Son of a Daughter may be Parcener with his Aunt. 73

— The several Manners of making Partition, by Agreement, Friends or Writ, &c. ibid.

— What Persons shall bring Writ of Partition, and the Process thereon. 73, 74

— It ought to be equal, otherwise not binding to the Issue, unless it is by Writ. 76

— Eviction of Part, defeats the Partition, it implying a Warranty to enter on the Whole. ibid.

— Where a new Partition shall be made. 77

— When Things unequal, how to be divided in Severalty, and Contribution by one to the others. ibid.

— Parcenary in Fee-simple not severed by the Death of any Parcener, but her Part descends to her Issue, &c. 78

The TABLE.

———— And Parceners have several Freeholds, tho' they make one Heir, Remedies against each other, &c.	Page 78
<i>Precedents of Deeds and Writings.</i>	349
A <i>Freehold Lease of Lands,</i>	<i>ibid.</i>
A <i>Mortgage of such Lease.</i>	353
A <i>Chattle Lease for 99 Years.</i>	356
A <i>Lease of Copyhold Land by Licence.</i>	361
A <i>Mortgage of a Copyhold Estate.</i>	363
A <i>Settlement of Copyhold Lands in Fee, made on Marriage.</i>	368
A <i>Lease of a large Farm in the Country, with great Variety of Covenants.</i>	373
A <i>Lease of a House in London.</i>	379
A <i>Conveyance by Lease and Release of Lands in Fee.</i>	383
A <i>Bargain and Sale of a Messuage and Lands to be inrolled.</i>	389
A <i>Deed declaring the Uses of a Fine.</i>	390
An <i>Indenture or Chirograph of a Fine levied in Court.</i>	392
A <i>Deed of Gift of a Capital Messuage and Lands.</i>	393
A <i>Will with Devise of Lands in Fee, for Life and Years, Freehold, Leasehold and Copyhold, with other special Legacies, &c.</i>	396

R.

<i>recovery, suffered of Lands, when good.</i>	94
———— By Tenants in Tail, without Assent of Persons in Remainder.	<i>ibid.</i>
———— Tho' if Tenant for Life alone suffer it, 'tis void.	<i>ibid.</i>
———— And such Tenants suffering a Common Recovery by Covin, forfeit their Estates, &c.	95
———— By	

The T A B L E.

By Recovery a Remainder is barr'd.	Page 103
Where it bars all Remainders whatsoever.	104
Except where a Remainder or Reversion is in the Crown, which will not be barred by it.	112
Remainder, what it is.	100
Rules for creating it, to be a particular Estate precedent to support the same, &c.	101
In case of an Use by Statute, and by Devise, may be good without particular Estate.	<i>ibid.</i>
A Freehold is necessary for supporting a Remainder.	102
Remainders absolute and contingent, and how destroy'd.	102, 103
The Remainder of an Estate vested, one may Grant, Devise or Lease.	103
Several Remainders to Uses in a Feoffment, how take Effect.	104
Estates limited in Remainder by Settlement to the Use of Children, born after the Father's Decease, good without Trusts to preserve them.	106
What intermediate Estates will support a Remainder, Difference herein between a Fine and Feoffment.	107
Cross Remainders where allowed or not.	108
By limiting a Remainder, the Reversion may pass, when Estates shall be open to let in a contingent Remainder.	109
A Remainder may not be limited after a Fee-simple, nor can Tenant in Tail limit it, how Remainders may be divested.	109, 110

The TABLE.

Remainders of a Rent good, but not the Reversion after.	Page 111
Writs lying for Persons in Remainder or Reversion, and other Remedy where Tenants for Life are absent.	111, 112
Reversion defined, the Residue of an Estate.	113
How it differs in Law from a Remainder.	114
Where the Use of the Fee continues in a Feoffor, there the Reversion is in him.	115
A Reversion may be granted by Bargain and Sale inrolled, Lease and Release, &c.	116
By Grant of Lands, the Reversion passes.	117
Grantees of Reversions may have Advantage of Conditions and Covenants against Lessees, &c.	ibid.
Estates granted by Tenant in Tail, shall not charge the Reversion.	118
Writs and Actions brought by Reversioners.	ibid.
Rent, reserved to a Man and his Heirs, &c.	203
When to be paid to the Heir, and when to the Executors.	203, 210
In case the Lessor dies on the Day of Payment, how it shall go.	204, 205
If reserved payable at such Feast, or in a Month after, not due till End of the Month.	205
Where Feasts or Days mentioned for Payment, on a Condition.	206
Lessor for Life dying before a Quarter-Day, by Common Law the Rent is gone, but by late Statute a due Proportion to be paid.	207
Action of Debt for Rent, and Ejectment, &c.	208
	— Dif-

The TABLE.

— Difference between a Rent reserv'd for Land, and Goods, &c. called Hiring.	Page 209
Rent is properly issuing out of Lands and Tenements, and incident to the Reversion, but not inseparably.	210, 211
— The several Kinds of Rents, as Rent-Service, Rent-Charge, and Rent-Seck, &c.	211, 212
— Distrainable of common Right, and by Prescription.	213
— Where Rent shall be apportioned, on purchasing Part of Lands, &c.	214, 215
— And where extinguished, or suspended, by Eviction of the Land, Entry, &c.	216, 217
— Demand and Tender of Rent.	217, 220
<i>Replevin</i> , what it signifies.	273
— By Writ or Plaint, to deliver Beasts distrained for Rent, &c.	<i>ibid.</i>
— The particular Proceedings thereon.	274, 275
— Where Cattle driven out of the County, Writ of <i>Withernam</i> lies to take so many of Distrainer's Beasts.	276, 277
— Of the Writ <i>Retorno Habendo</i> , and second Deliverance.	278, 279
— In a <i>Replevin</i> , the Defendant may avow or justify, Manner of the Avowry.	281
— The Statutes relating to <i>Replevins</i> and Avowries.	282, 283
— Avowries and Cognizances upon Distresses, Sureties to prosecute <i>Replevins</i> , Bonds assigned, &c. by Statute 11 <i>Geo. 2.</i>	284, 285
A Plaint, Count, Avowry, and Judgment in <i>Replevin</i> .	286

The TABLE.

Rescous of a Distress, where a Disseisin of Rent-Service.	Page 222
—— Where it is not a Rescous to take away Goods distrained.	259
—— Treble Damages and Costs given for Rescous and Pound-breaches.	262, 263

T.

Tail Estate, what it is, and when introduced.	79
—— General Tail, to a Man and the Heirs of his Body, and Special to a Man and his Wife and the Heirs of their two Bodies.	80
—— Where it is a special Tail or not, on Lands given to a Man and Woman unmarried, or another Man's Wife, &c.	81
—— What Heirs only are inheritable to Estates-tail.	82
—— The Difference between a Gift or Grant and a Devise, that which makes a Fee-simple in one, is an Estate-tail in the other.	82, 83, 84
—— Where Words of Limitation create the Tail.	85
—— The Words <i>want of Issue</i> , make an Estate-tail by Implication.	86, 87
—— When construed an Estate-tail, and when for Life, where a Term for Years void, to support the Tail.	88, 89
—— An Estate by Conveyance and Will not to be tacked together, to make an Estate-tail.	90, 91
—— Estates-tail executed, and where Tenants in Tail have Remainders over to each other.	91, 92
—— What	

The TABLE.

—— What Estate-tail is a Perpetuity, and void in Law.	Page 93
—— Tenant in Tail cannot be restrained from suffering a Recovery.	94
—— Leases made by these Tenants, for Lives or Years, according to the Statute.	95
—— Estates-tail incident to, in divers Cases.	96
—— Where an Estate-tail merges in the Fee-simple, and a General frustrates the Special.	97
<i>Tail after Possibility of Issue</i> , Tenant in Tail so called, and his Estate.	<i>ibid.</i>
—— It must be Donee in Special Tail where one dies without Issue, not where Husband and Wife live though till each one Hundred Years old.	98, 99
—— Where one may be Tenant in Tail, Tenant after Possibility, and for Life, all by one Settlement.	99
—— Tenant after Possibility, has greater Privileges than Tenant for Life.	<i>ibid.</i>
—— But the Quality of his Estate is not greater.	<i>ibid.</i>
—— Privileges gone, by Grant and Assignment over, yet Quality remains though the Estate is changed by Death of one Donee.	99, 100
<i>Tenants in Common</i> , who are such.	158
—— Where Lands given to two Persons, to hold a Moiety to one, and Moiety to the other.	<i>ibid.</i>
—— May be by Prescription, where a Person and his Ancestors have so held.	159
—— A Devise to three, Share and Share alike, makes Tenancy in Common.	160
—— Great	

The T A B L E.

- Great Diversity of Opinion concerning the Word *Equally*, where Lands are given to two or more. Page 161, 162
- One may not be Tenant in Common, and others Jointenants in such Case. 163
- Grants of Tenants in Common how construed, with respect to their several Interests. 164
- In real Actions they are to sever, but in personal Actions join. 164, 165
- What Remedies Tenants in Common have against each other, in Case of Trespas, &c. 165
- One such Tenant may infeoff the other, but cannot Release to him, the contrary is of Jointenants. 166
- Tenants for Life*, Description of. 178
- For a Man's own or another's Life, and when but one Freehold, with several Limitations. 179
- Difference between a Limitation and Condition, where the Estate shall determine, and where not. 180
- Where Lands granted for Life generally, without mentioning for whose Life, how construed in Law. *ibid.*
- Estates for Life determinable, where Livery made. 181
- A Tenant for Life granting a greater Estate than he has, by Feoffment, &c. forfeits his Estate. 182
- Incidents to the Estate of Tenant for Life, to have Estovers of Wood to burn, and for Repairs, &c. 183
- Special Interest in Timber-Trees, but may not cut them, except Estate be without Impeachment of Waste. 184
- Exe-

The TABLE.

——— Executors to have Corn sown, where Lessee for Life dies before cut.	Page 185
——— Though Tenant for Life or Years, &c. lose his Lease, he shall not lose the Term.	186
——— An Estate for ever so many Years, not like a Freehold Estate for Life.	187
<i>Tenant for Term of Years</i> , who is.	<i>ibid.</i>
——— Not till Entry on the Tenements, tho' he has an Interest in the Term.	<i>ibid.</i>
——— The Properties of Leases for Years, how made, &c.	188, 189
——— Where a second Lease granted for Years is good, and where not.	190
——— By whom made, and for what Terms, &c.	192, 193
——— To be put in Writing and signed by the Parties, or else only Estates at Will. See <i>Leases</i> .	195
<i>Tenant at Will</i> , and his Estate.	196
——— Where the Will may be determined, not to the Damage of either Lessor as to the Rent, or Lessee as to Corn sown, &c.	<i>ibid.</i>
——— This Tenant may not grant his Estate over.	<i>ibid.</i>
——— He is not bound to repair the Premises, but may be punish'd for Waste.	197
——— The Lessor's Entry determines the Will, so if he dies, &c.	<i>ibid.</i>
<i>Tenant at Sufferance</i> , who is such.	<i>ibid.</i>
——— One holding over after his Estate ended.	<i>ibid.</i>
——— But paying the Rent amounts to a new Lease.	<i>ibid.</i>
<i>Tender</i> of Rent, must be the whole due.	220
——— How and where made, excuses Damages, but Action lies after.	220, 221

——— What

The TABLE.

—— What is a sufficient Tender, and what not good. Page 221

—— Where made before or after a Distress taken, &c. to make it wrongful or otherwise.

222

W.

Warranty, Description of. 119

—— May be added to any Conveyance of Lands. *ibid.*

—— The several Sorts of, Lineal, Collateral, or commencing by Disseisin. 120, 121

—— How altered by a late Statute, as to Tenants for Life. 122

—— The Words *Dedi & Concessi* make a Warranty, *ibid.*

—— Things necessary to a good Warranty, what shall be recovered in Value thereon. 123

—— And how far it extends to all the Land, and is a Bar to every Person on whom it shall descend. 124

—— Where a Warranty may bind the Heir, tho' it never bound the Ancestor. 125

—— Persons not bound by it, and by what Means discharged or defeated. *ibid.*

Waste, what it is. 229

—— In suffering Houses to be in Decay, &c. permissive, or actual. *ibid.*

—— Pulling down a House, or Walls, taking away and breaking Wainscot, &c. 230

—— If Tenants cut down any Timber-trees, or more Fire-bote than necessary, it is Waste. 231

—— Cutting dead Trees, or Fruit-trees in a Field is no Waste, but 'tis otherwise in a Garden.

232

—— Stubbing

The TABLE.

—— Stubbing up a Quickset-Hedge, &c. Waste.

Page 232

—— Altering or converting Houses to other Uses is Waste; so ploughing up Land not ploughed Time out of Mind, ancient Meadow, &c. *ibid.*

—— To suffer Banks of the Sea to be in Decay, not scour a Mote or Ditch, where Waste.

233

—— The digging of Mines is Waste, but not Stones, &c. for Repairs. *ibid.*

—— Destroying Pigeons, Rabbits, Deer, or Fish, are Waste. *ibid.*

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